1924

(18,818.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 205.

HAROLD CROWLEY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

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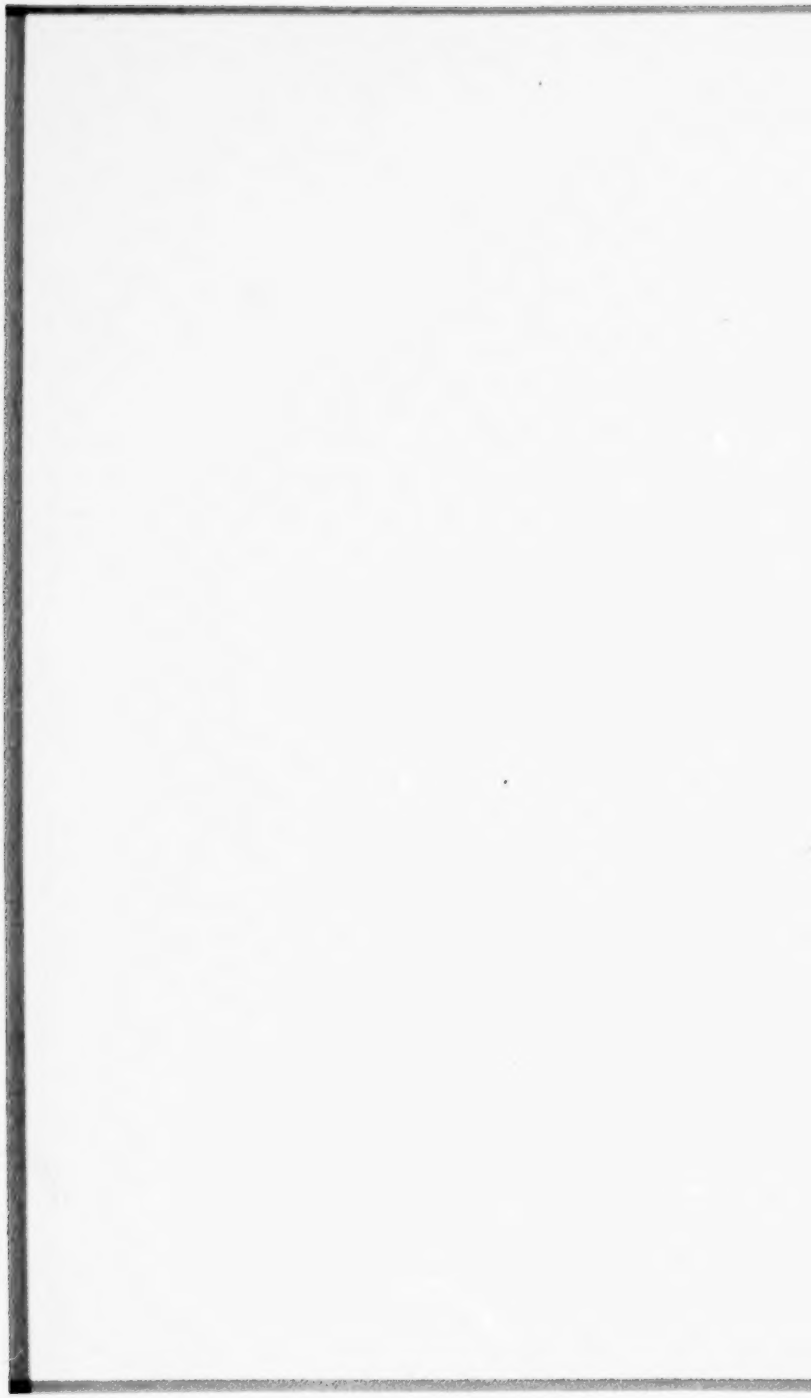

1 At a stated term of the district court of the United States within and for the district of Porto Rico begun and held in the court room of said court at the city of San Juan in said district on the second Monday in April being also the 8th day of the month, in the year of our Lord 1901 and in the 126th year of the Independence of the United States of America.

On the 10th, day of said month and year, came the grand jury and returned a certain indictment which was filed and is as follows, to wit:

UNITED STATES OF AMERICA, }
District of Porto Rico, } *ss:*

In the District Court of the United States in and for the District Aforesaid, at the April Term Thereof, A. D. 1901.

The grand jurors of the United States, impanneled, sworn, and charged at the term aforesaid, of the court aforesaid, on their oath present, that Harold Crowley, late of the district aforesaid, clerk on the 24th, day of March, in the year 1901, in the said district, and within the jurisdiction of said court was a person employed in a department of the postal service of the said United States, to wit: a clerk in and for the post office of the said United States at Ponce within said district; and that a certain letter then directed and intended to be conveyed by mail to the postmaster of the post office of the said United States at San Juan, Porto Rico, had then and there come into the possession of the said Harold Crowley, so then being employed as aforesaid, to wit: at Ponce aforesaid in the district aforesaid, which said letter then and there contained gold coin and divers bank notes, United States notes and bank checks, amounting together to the sum of three hundred and seventy seven dollars of the money and property of the said United States; and that the said Harold Crowley, then and there, so being employed as aforesaid feloniously did steal and take the said gold coin, bank notes and United States notes to the amount of the value of two hundred and twenty seven dollars out of the said letter, which had not then been delivered to the said person to whom the
2 same was so directed, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

(Signed) N. B. K. PETTINGILL,
United States Attorney.

And the grand jurors aforesaid do further present that the said Harold Crowley on the 24th, day of March in the year 1901, at the city of Ponce, Porto Rico, in the district aforesaid and within the jurisdiction of the said court was then and there a person employed in a department of the postal service of the United States, to wit: a clerk in the post office of the United States at Ponce aforesaid,

unlawfully and feloniously did then and there secrete, embezzle and destroy a letter then and there *a letter* entrusted to him, the said Harold Crowley, and which came into his possession as such post office clerk and which said letter was then and there registered matter and intended to be conveyed by mail and forwarded through said post office at Ponce, and delivered to the postmaster of the United States post office at the city of San Juan, Porto Rico, to whom said letter was then and there addressed at said post office at San Juan aforesaid, which said letter then and there contained, among others, certain articles of value, that is to say, one United States silver certificate of the denomination of five dollars of the series of 1896 numbered J 25535872, one United States Treasury note of the denomination of ten dollars of the series of 1880 numbered A 24281565, one ten dollars note of the First National Bank of Saratoga Springs, New York, of the series of 1882 numbered V 182607 E, and one five dollar note of the Athol National Bank of Athol Massachusetts, of the series of 1882 numbered T 817083 E each article being of the value indicated upon the face thereof, twelve United States ten dollar gold pieces each of the value of ten dollars and one United States five dollar gold piece of the value of five dollars, all said articles being then and there the property of the
3 United States, and which said letter and each of said articles of value *to* said Harold Crowley did then and there unlawfully and feloniously embezzle and fraudulently and feloniously convert to his own use, and did then and there feloniously steal and take such of said articles of value out of said letter and convey away the same, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

(Signed) N. B. K. PETTINGILL,
United States Attorney.

And the grand jurors aforesaid, on their oath aforesaid, do further present, that the said Harold Crowley on the 24th, day of March, in the year 1901, in the said district, and within the jurisdiction of said court, was a person employed in a department of the postal service of the said United States to wit: a clerk in the post office of the said United States at the coty of Ponce within the district aforesaid and that a certain letter then lately before sent by one Rafael Delgado of Yauco, Porto Rico and directed and intended to be conveyed by mail from said Yauco to the postmaster of the post office of the United States at the city of San Juan in the district aforesaid, then came into the possession of the said Harold Crowley at Ponce aforesaid in the district aforesaid which letter last aforesaid then and there contained certain money and other articles of value of the value of three hundred and seventy seven dollars. And the said Harold Crowley then and there, so being such post office clerk as aforesaid and the letter last aforesaid so having come into his possession and the same not having been delivered to the said person to whom it was so directed as aforesaid, feloniously did secrete and embezzle the same letter, so then and there containing

the said money and articles of value as aforesaid, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

(Signed) N. B. K. PETTINGILL,
U. S. Attorney.

4 (Indorsement:) No. 221. District court United States district of P. R. The United States *vs.* Harold Crowley. Indictment. Violation of sec. 5467 R. S. etc. A true bill. (Sig.) J. R. Latimer, foreman. Filed April 10th, A. D. 1901. S. Solomon, deputy clerk. (Sig.) N. B. K. Pettingill, U. S. attorney.

And afterwards to wit: on the last day last aforesaid, an entry was made upon the journal of said court in said cause which said entry is as follows, to wit: In the case of The U. S. *vs.* Harold Crowley, the prisoner was brought to the bar and the court fixed his bail in the sum of two thousand five hundred dollars for his appearance for trial.

And afterwards, to wit: on the 13th, day of April, 1901, an entry was made upon the journal of said court in said cause, which said entry is as follows, to wit: U. S. *vs.* Harold Crowley. Mr. Dexter appears as counsel for the defendant.

And afterwards, to wit: on the same day last aforesaid an entry was made upon the journal of said court in said cause which said entry is as follows, to wit: In the case of The U. S. *vs.* Crowley. Mr. Dexter appeared and filed a plea in abatement.

The plea *and* abatement as aforesaid filed in the clerk's office of said court is as follows, to wit:

In the District Court of the United States for Porto Rico, San Juan, April Term, 1901.

UNITED STATES *vs.* HAROLD CROWLEY. } Plea in Abatement.

Now comes the defendant, Harold Crowley and pleads in abatement to the indictment returned herein and says, that on Monday the 8th, day of April, 1901, there appeared in this court at San Juan it being the first day of said term, the following named persons.—Manuel Romero Haxthausen, Pedro Fernandez, Alex
5 Nones, John D. H. Luce, Antonio Blanco, Manuel Andino Pacheco, E. L. Arnold, Henry V. Dooley, J. Ramon Latimer, Miguel Olmedo, Ramon Gandia, Charles H. Post numbering twelve in all, which said persons were then and there by the direction of the court and the marshal, placed in the jury box to constitute the panel for the grand jury of this said April term 1901, of this court.

Whereupon the court then ordered the marshal to summon other

persons to fill up the panel of the said grand jury, and immediately the marshal of the court sent his deputy out of the court room and into the city of San Juan to summon other jurors for such grand jury. Within a few minutes thereafter the marshal brought into court Frank Antonsanti (returned as Antonio Santi and Frank Santi as appears by the minutes of this court), Hugo Stern and William Bowen, the said persons not having been then and there bystanders in the court. That said panel then being incomplete, the marshal placed W. H. Holt Jr. in the box, he being at *b* the time a bystander in said court.

Defendant says that thereupon the grand jury was constituted from the persons above named and after being sworn, proceeded to render a true bill against the defendant, which said alleged true bill on indictment was by the said grand jury, constituted as aforesaid returned and presented to this court on Wednesday April tenth 1901.

Defendant says that by an act of the legislative assembly of Porto Rico, which took effect January 31st, 1901 it was provided that jurors shall have the following qualifications—among others,

1st. A male citizen of the United States or of Porto Rico after the age of 21 years, who shall have been a resident of the island one year and of the district or county ninety days before being selected and returned.

4th. Assessed on the last assessment all of the district or
6 county on property of the value of at least two hundred dollars belonging to him.

SECTION 4. A person is not competent to act as juror, 1st. who does not possess the qualifications prescribed by the preceding section which said provissions were in full force and effect at and before the time that all of the persons above named were summoned and impanelled and returned said indictment as aforesaid.

That by the law of Porto Rico as aforesaid causes of challenge to jurors are and were at said time last above mentioned," a want of any of the qualifications prescribed by law to render a person a competent juror. Defendant — that Manuel Andino is and was at the time above mentioned a citizen of the Republic of Venezuela. That W. H. Holt, Jr. has not been a resident of Porto Rico for one year prior to the dates and time above mentioned when said jury was so summoned, impanelled and returned and when said alleged indictment was returned.

Defendant says that at the same time last above mentioned the following persons composing and constituting the said grand jury were not assessed on the last assessment roll of any district in Porto Rico on property of the value of two hundred dollars belonging to him. Antonio Blanco, Manuel Andino Pacheco, Miguel Olmedo, Charles H. Post, Frank Antonsanti, or Frank Santi, or Antonio Santi, W. H. Holt Jr., William Bowen.

Defendant further says that the following persons, composing and constituting said grand jury were not at the time above mentioned *were not* publicly drawn from the box containing at the time of each

drawing the names of not less than three hundred persons, possessing the qualifications prescribed in section 800 of the Revised Statutes and which said names (hereinafter set out) had not been placed therein by the clerk of this court and a jury commissioner as provided by act of June 30th, 1879.

Such persons whose names were not in said box and selected
7 and summoned in the manner as aforesaid at the dates and times aforesaid were, Hugo Stern, W. H. Holt Jr., Frank Antonsanti, alias, Frank Santi, alias, Antonio Santi, William Bowen.

Defendants says that no writs of *venire facias* were directed by the court against the said last above named persons, from the clerk's office, signed by the clerk or his deputy, nor returned in the manner provided by Revised Statutes #803. Defendant says that he was not present in court at the time of the selection, summoning and impanelling of the jury aforesaid and has had no opportunity to make any challenges to the same as the members thereof because he did not know of said action and was not at the time represented by counsel but that he has this day learned of the aforesaid acts for the first time and therefore immediately presents this plea.

Defendant says that he has been and would be greatly prejudiced by the improper and illegal selection and impanelling of such grand jury as aforesaid as it was composed at the times aforesaid of persons disqualified to act and who were not residents or tax payers of Porto Rico as required by law and because of their unfamiliarities with the island and the conditions and circumstances, material matters in this case and relevalt thereto, some of said jurors as aforesaid *and* having been but a few months in the island and temporarily sojourning herein.

In addition to W. H. Holt Jr., and William Baun, the following gentlemen of the grand jury were American citizens, John D. H. Luce, E. L. Arnold, Henry W. Dooly, J. Rqmon Latimer, foreman thereof, Charles H. Post, Frank Antonsanti, by reason of which and their supposed knowledge of such practices by grand juries in the courts of the United States might, and as defendant, believes did *contend* the deliberations of said jury so as to induce a finding of an indictment where the Porto Rican citizens thereof might not have otherwise done.

Wherefore defendant prays that the said indictment be dismissed and quashed.

F. H. DEXTER,
8 *Attorney for Defendant.*

Harold Crowley being duly sworn, upon his oath, says that the foregoing is true as he verily believes.

(Signed) HAROLD CROWLEY.

Subscribed and sworn to before me this 13th, day of April 1901.

RICARDO NADAL,
Clerk U. S. Dist. Court,

(Sig.) By SAMUEL SOLOMON,
Deputy Clerk.

(Indorsement:) United States *vs.* Harold Crowley. Plea in abatement. Filed. Clerk's office. U. S. district court. April 13, 1901 Samuel Solomon, deputy clerk of the court.

And afterwards, to wit: on the same day last aforesaid, there was filed in the clerk's office of said court a certain demurre- which said demurrer is as follows, to wit:—

In the District Court of the United States *of* Porto Rico.

UNITED STATES
vs.
HAROLD CROWLEY. } Indictment.

Now comes the United States by its attorney for said district and demurrers to the plea in abatement this day filed on behalf of the defendant herein and says that the same is insufficient in law.

And for grounds of demurrer the United States specifies the following:

1st. That said plea sets forth matters entirely immaterial to the validity of the indictment against the defendant.

2nd. That the matters set forth in said plea, even if true constitute no reason why the said defendant should not be required to plead in bar thereof.

3rd. That the matters and things set forth in said plea, in so far as the same control, or are applicable to the procedure of this court in the summoning and empanelling of a grand jury shows no illegality therein.

4th. Because of other good and sufficient reasons apparent on the face of said plea.

(Sig.) N. B. K. PETTINGILL,
U. S. Attorney.

(Indorsement:) U. S. district court, dist. of Porto Rico. United States *vs.* Harold Crowley. Demurrer to plea in abatement. Filed. Clerk's office United States district court. April 13th, 1901, Samuel Solomon, deputy clerk.

And afterwards, to wit: on the 15th day of April, 1901, an entry was made upon the journal of said court which said entry is clothed in the words and figures following, to wit:

The case of U. S. *vs.* Crowley, was then taken up. Mr. Pettingill district attorney appearing for the U. S. and Mr. Dexter appearing for the defendant. The defendant not being present in court the argument was adjourned by the court until the defendant be present.

And afterwards, to wit: on the said day last aforesaid an entry was made upon the journal of said court in said cause which said entry is as follows, to wit:

The case of the U. S. *vs.* Crowley was resumed, the defendant be-

ing in court. After the argument of counsel the demurrer to the plea—sustained.

Thereupon the defendant was duly arraigned and pleaded
10 not guilty.

The order sustaining demurrer to the plea and overruling plea was filed and is as follows, to wit:

In the United States District Court for the District of Porto Rico.

THE UNITED STATES, Plaintiff,
vs.
HAROLD CROWLEY, Defendant.

Order.

The plea in abatement questions the regularity of the organization of the grand jury that found the indictment.

Of the twenty persons drawn and summoned, twelve appeared and were, as shown by the record, placed in the box in making up the necessary panel of sexteen, and as four were lacking the court directed the marshal to summon four persons from the body of the district to supply the deficiency, and the marshal presented four men and they were placed in the box with the other twelve, making the required number.

It was not required, in my opinion, that names should be drawn from the jury box to supply this deficiency. To thus construe the law would render it burdensome, expensive, and impracticable, and it is evident this was not the legislative intent.

(United States *vs.* Eagan) (30th Fed. Rep. 608)

The jury law recently enacted by the legislative assembly of Porto Rico appear- to make no provisions for a grand jury but in any event it did not take effect until April 1st, 1901, and the record shows the venire of grand jurymen for this term was executed and they summoned prior to that date.

Moreover, the court is by no means satisfied that that law admits of application to the proceedings of this court.

Mere irregularities in the formation of a grand jury do not invalidate its action, but there seem to have been none in this
11 instance. The persons composing the grand jury were examined touching their qualifications and were qualified according to the rule prescribed by this court.

The demurrer to the plea is sustained and the plea overruled.

(Signed) WM. H. HOLT, *Judge.*

(Indorsement:) In the United States district court for the district of Porto Rico. The United States, pl'ff—*vs.*—Harold Crowley, def't. Order sustaining demurrer to the plea and the plea overruled. Filed in clerk's office. United States district court. April 15th, 1901. Ricardo Nadal, clerk of the court. Samuel Solomon deputy clerk.

And afterwards, to wit: on the same day last aforesiad an entry was made upon the journal of said court in said cause which said entry is as follows, to wit: Now comes the attorney for the defendant and filed a demurrer to the indictment which he submits to the court, and after hearing the argument of the district attorney in opposition thereto, the demurrer is over-ruled.

The aforesaid demurrer is clothed in the words and figuers following, to wit:

In the District Court of the United States for Porto Rico.

UNITED STATES
vs.
HAROLD CROWLEY. } Demurrer.

Defendant, Harold Crowley, demurs to the *injunction* herein filed against him and to each of the three counts thereof for the reasons that neither the said indictment nor any count thereof sets forth an offense against the statutes or laws of the United States and because the said indictment and the said counts thereof are not suffi-
12 cient in law and because the said indictment fails to show that this court has jurisdiction of this cause or of the person of this defendant. Wherefore defendant prays that the said indictment and each count thereof be dismissed.

(Signed) F. H. DEXTER,
Attorney for Defendant.

(Indorsement.) United States *vs.* Harold Crowley. Demurrer to indictment. Filed clerk's office United States district court April 15th, 1901 Ricardo Nadal, clerk of the court. S. Solomon deputy clerk.

And afterwards, to wit, on the last day aforesaid, a further entry was made upon the journal of said court in said cause which said entry is as follows: to wit:

Thereupon the court makes the following order.

This case, at the request of the defendnat and the district attorney not objecting, is transferred to the next term of this court at Ponce to be called on the 3rd, day of the term, and in the event that the defendant does not give bail, then the marshal of this court, will at the proper time, take and transport him there for trial.

And afterwards to wit: on the 17th day of May 1901, an entry was made upon the Ponce journal, of said court in said cause which said entry is clothed in the words and figures following, to wit:

UNITED STATES
vs.
HAROLD CROWLEY. }

The cause of the U. S. *vs.* Crowley was called, the defendant being present, the following persons qualified as jurors in said cause, to

wit: Estoquio Quesada, Alfredo Luis Casals, Paul de Campigñie, A. Morales, Lebrón. Manuel Domenech, G. C. Sutton Jacob Torres, Luis Davila Jordán, P. M. Bond, Thomas R. Hodgins, Juan Seix Rosaly and Tomas Blasini.

Mr. Dexter files a plea to the jurisdiction of the court and
13 Mr. Pettingill, district attorney files a demurrer to said plea, which demurrer is sustained by the court without argument. (Said plea and demurrer were as follows, to wit:

In the District Court od the United States for Porto Rico, Ponce.

UNITED STATES
vs.
HAROLD CROWLEY.

Plea to the Jurisdiction.

Now on this 17th day of May 1901, in the city of Ponce, comes Harold Crowley and gives the court to understand that he pleads to the jurisdiction of the court herein and says that it has no jurisdiction to proceed further *with* herein for the reason that this is not a regular term of this court as provided by law and that it is without authority to proceed herein except at a regular term hereof.

HAROLD CROWLEY,
By F. H. DEXTER, *Attroeny.*

Demurrer.

In the U. S. Court, Dist. of Porto Rico.

UNITED STATES
vs.
HAROLD CROWLEY.

Now comes the United States attorney and demurr*ers* to the plea called "plea to the injunction" and filed herein by the defendant on the 17th day of May instant, and for cause of demurrer shows that the matters alleged in said plea are insufficient in law to oust the jurisdiction of this court.

Wherefore the United States prays judgment of the said plea and that the same may be quashed.

(Sig.) N. B. K. PETTINGILL,
U. S. Attroeny.)

14 Thereupon the jury was duly sworn. Thereupon the district attorney read the indictment and on motion of Mr. Dexter, attorney for the defendant, moves the court that the district attorney should elect on what count he will prosecute, and after hearing Mr. Dexter in support of said motion, the district attorney in opposition thereto, motion is over-ruled and an exception taken

by the attorney for the defence. The witnesses for the prosecution were duly sworn. The witnesses for the defense were duly sworn.

And afterwards, to wit: on the day last aforesaid, an entry was made upon the journal of said court in said cause which said entry is as follows, to wit: The tri-ls of the case of The U. S.—*vs.*—Crowley resumed, the defendant being present, Mr. Dexter the attorney for the defence moves the court to compel the district attorney to elect on which count or counts he will proceed to prosecute, which motion the court over-ruled.

(The aforesaid motions appear in the bill of exceptions.)

And afterwards, to wit: on the 18th day of May, 1901, there was an entry made upon the journal of said court in said cause which said entry is clothed in the words and figu*e*rs following, to wit: The case of The U. S.—*vs.*—Crowley was called, the defendant being in court, the trial was resumed.

And afterwards, to wit: on the same day last aforesaid, the trial of the case of The U. S.—*vs.*—Crowley was called, and the defend*a*nt being in court, the trial was resumed. Thereupon the court ordered that a certified copy of the proceedings had in the case of The U. S.—*vs.*—Crowley in the U. S. district court for the district of Porto Rico at San Juan be filed at Ponce, thereupon the Government rested. Thereupon Mr. Crowley one of the attorneys for the defendant moves the court to direct a verdict of not guilty and after hearing Mr. Crowley and Mr. Dexter in support of said motion and the district attorney in opposition thereto, the court denied said motion.

Thereupon the defendant's attorneys proceed with the trial, the defendant rests.

And afterwards to wit: on the same day last aforesaid at 7.15 p. m. an entry was made upon the journal of said court in said cause which said entry is as follows, to wit: The case of The U. S. *vs.* Crowley was called and the defendant being in court the trial was resumed: The jury after hearing the evidences of the witnesses, the argument of counsel, the charge of the court retired for deliberation.

Now comes the U. S. marshal, and reports to the court that the jury in the case of The U. S. *vs.* Crowley, had agreed upon a verdict, thereupon the court orders the marshal to bring said jury to court. The jury being called answered to their names and through their foreman, rendered the following verdict:

"We the jury do find the defendant guilty as charged in the indictment.

E. TORRES, *Foreman.*

Ponce, May 18th, 1901."

Thereupon the jury was polled and each juror answered it was his verdict.

And afterwards, to wit: on the 21st, day of May 1901, and entry was made upon the journal of said court in said cause which said entry is as follows, to wit: Thereupon the court ordered the marshal to bring Harold Crowley into court, and thereupon the court asked Harold Crowley if he has anything to say, why sentence should not be passed upon him. Thereupon Harold Crowley files a motion in arrest of judgment on the verdict of the jury.

(Said motion filed as aforesaid is as follows, to wit:

United States District Court, District of Porto Rico, May 21st, 1901.

UNITED STATES
vs.
HAROLD CROWLEY.

The above defendant upon being asked if he had anything to say why sentence should not be passed upon him, on the verdict of the jury, moves in arrest of sentence and judgment upon all the grounds and reason- stated by him and through his counsel, F. H. Dexter from the commencement of this court at San Juan Porto
16 Rico in April 1901, and upon his alleged trial at and in this alleged court at Ponce, Porto Rico down to rendering and entery of the verdict of the jury herein May 18th, 1901.

(Sig.) HAROLD CROWLEY,
By F. H. DEXTER,
Att'y and Counsel.)

Thereupon the court sentenced Harold Crowley to 4 years imprisonment in the penitentiary at hard labor.

And afterwards, to wit: on the same day last aforesaid our certain final commitment was issued out of the clerk's office of said court against the said defendant, Harold Crowley, which said commitment is clothed in the words and figuers following, to wit:

The District Court of the United States, Dist. of P'to Rico.

UNITED STATES
vs.
HAROLD CROWLEY. } Indictment # 221.

The defendant Harold Crowley, having been tried and found guilty as charged in the said indictment for embezzlement a violation of section 5467 of the Revised Statutes of the United States.

Thereupon the court pronounced the following sentence to wit that the said Harold Crowley be imprisoned in the penitentiary of the island of Porto Rico for the term of four years at hard labor.

Therefore this is to command the marshal of said district to take the body of the said Harold Crowley and commit the same to the penitentiary of the island of Porto Rico pursuant to the above sentence.

Witness the Honorable William H. Holt, judge of the United States district court for the district of Porto Rico this 21st day of May 1901, and in the 125th year of the Independence of the United States of America.

RICARDO NADAL,
Clerk U. S. Dist. Court of P. R.,
(Sig.) By A. AGUAYO,
[SEAL.] *Deputy Clerk U. S. Dist. Court of P. R.*

(Indorsement:) U. S.—*vs.*—Harold Crowley. Commitment.

17 And afterwards, to wit,: on the 24th, day of May 1901, an entry was made upon the journal of said court in said cause which said entry is as follows, to wit: In the case of the U. S. *vs.* Harol*s* Crowley, the defendant files a motion for a new trial and also for arrest of sentence. The same is over-ruled and also files a petition for appeal with assignment of errors. which appeal is granted. Said motions filed as aforesaid are as follows, to wit:

(*Motion for an New Trial.*)

In the District Court of the United States for Porto Rico, May, 1901.

UNITED STATES
vs.
HAROLD CROWLEY. } Ponce.

Motion for a New Trial.

Now comes defendant, Harold Crowley and moves the court for a new trial herein for the reasons that

(1.) Improper and incompetent evidences was offered by the district attorney and admitted by the court over the objection of defendant.

(2.) Because the court rejected competent and proper evidence offered by defendant.

(Sig.) HAROLD CROWLEY,
By F. H. DEXTER,
His Attorney.

(Indorsement:) United States *vs.* Har*los* Crowley. Motion for new tri*w*l. Filed. clerk's office. U. S. dist. court. May 24th, 1901. (Sig.) Ricardo Nadal. clerk of the court. by A. Aguayo.

(*Motion in Arrest of Sentence.*)

In the United States District Court for Porto Rico, May, 1901.

UNITED STATES
vs.
HAROLD CROWLEY. } Motion in Arrest of Sentence.

Now comes defendant Harold Crowley and moves the court

18 to arrest the sentence of the court herein for the following reasons to wit:

(1.) Because of the -rror of the court in over-ruling defendant's plea of abatement filed herein, because of the defective and illegal organization, selection and summoning of the grand jury that returned the indictment herein.

(2.) Because of the error of the court in over-ruling the demurrer to the indictment herein.

(3.) Because of the error of the court in refusing to order the district attorney to elect upon which of the counts he should proceed in said indictment.

(4.) Because of the error of the court in over-ruling the plea of defendant to the jurisdiction for the reason that said indictment and each and every count thereof was and is fatally defective and because there is no authority of law for the holding of the session of court in Ponce at the time and place so held.

(5.) Because of the error of the court in over-ruling the objections of defendant to the introduction of testimony herein based upon all of the objections and errors set forth in paragraphs 1, 2, 3, 4 herein.

(6.) Because the court erred in not directing a verdict for the defendant upon the conclusion of the Government's case.

(7.) Because the verdict and sentence herein are irregular and void.

(Signed) HAROLD CROWLEY,
By F. H. DEXTER,
His Attorney & Counsel.

(Indorsement:) United States *vs.* Harold Crowley. Motion in arrest of sentence. Filed. clerk's office U. S. dist. court May 24th, 1901. (Sig.) Ricardo Nadal, clerk of the court by, A. Aguayo, deputy.

(*Motion for Order Allowing Appeal, Assignment of Errors, Order Allowing Appeal, and Citation.*)

19 United States District Court, District of Porto Rico.

UNITED STATES *vs.* HAROLD CROWLEY. } Prtition for Order Allowing an Appeal.

Harold Crowley, the above named defendant, conceiving himself aggrieved by the indictment, trial and verdict of the jury, and the sentence and judgment entered on the twenty-first day of May, 1901, and upon an assignment of errors filed herewith, comes now Frank H. Dexter, his attorney and petitions the above court for an order allowing him, said defendant, to take and prosecute an appeal to the honorable the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided, and also that an order may be made fixing the amount of

security which the defendant shall give and furnish upon said appeal, and that upon the giving of such security all further proceedings under said judgment in this court be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

And your petitioner will ever pray.

Dated May 23, 1901.

(Signed) HAROLD CROWLEY.
[SEAL.]

(Sig.) F. H. DEXTER, *Att'y.*

DISTRICT OF PORTO RICO, *City of San Juan,* } ss:

Harold Crowley being duly sworn says that he is the defendant in the above entitled action. That he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge.

(Sig.) HAROLD CROWLEY.

Signed and sworn to before me this 23rd day of May, 1901.

(Sig.) JOSEPH ANDERSON, JR.,
U. S. Commissioner.

20 United States District Court, District of Porto Rico.

THE UNITED STATES
vs.
HAROLD CROWLEY. } Assignment of Errors at Law.

Now comes the above named defendant's attorney and files the following assignment of errors upon which he will rely in his appeal from the judgment of conviction made and entered herein May twenty-first 1901, in said district court for Porto Rico.

First.

That said court erred in the drawing, impaneling and formation of the grand jury impaneled at San Juan in said district at and for the April term, 1901, of said court, at which term, and by which pretended grand jury the indictment herein against said defendant was found and presented and filed in this court, and upon which indictment this defendant has been tried and convicted, and that said court further erred in overruling the objections and demurrers of defendant to the drawing, organization and impaneling of said pretended grand jury, and further erred in refusing to hear and investigate the objections of defendant to the drawing, organization, and impaneling of said grand jury, and to the legal qualifications and competency of certain persons named by defendant in said court to sit and act as grand jurors in and for said district of Porto Rico at said term of court.

That said grand jury was illegal and its acts and proceedings in this defendant's case were null and void.

Second.

That said court erred in over-ruling the demurrers interposed by this defendant to the indictment filed in this cause, and to
21 each count thereof, and by holding and deciding that the facts and allegations stated in said indictment were sufficient in fact and law to put this defendant upon his plea of not guilty, and by o-er-ruling all defendant's objections to the sufficiency of said indictment and its counts before pleading not guilty to the same, and also upon the trial of this defendant therein, at the May term, 1901 of this court.

Third.

That said court erred upon said trial at the close of the case and evidence on the part of the United States, in refusing to direct a verdict of acquittal of defendant, upon the various grounds stated by said defendant, upon his motion for such direction, and particularly on the ground that said indictment, nor any of its counts, did not contain any averment of the deposit and mailing of the letter mentioned therein in any post office of the United States, or place for the deposit of mail matter, nor did the second count of said indictment contain any allegation that said letter had not been delivered to the person to whom it was addressed, nor was there any evidence at the close of the case on the part of the United States that said letter had not been delivered to the person to whom it was addressed.

Fourth.

The court erred upon said trial in receiving evidence offered by the United States, to which this defendant objected, and in over-ruling defendant's objections thereto, and also erred in refusing to receive evidence offered by this defendant all which appears in the case and exceptions filed therein.

Fifth.

The court erred in rendering judgment against the defendant in said cause upon the indictment and evidence, and said judgment is contrary to law and to the facts.

Sixth.

The court erred in this cause in exercising jurisdiction or in attempting to exercise jurisdiction over this defendant, in his trial upon said indictment, and in over-ruling defendant's plea to the
22 jurisdiction of said court upon the ground that there was not any power or authority in law for the holding of said court at Ponce in said district of Porto Rico, at the time at which defendant was tried and said judgment rendered and commencing May

thirteenth, 1901, and alleged regular term were and are null and void.

Therefore said defendant and appel-ant prays that the judgment of said court be reversed, and such directions be given that full force and efficiency may come to defendant by reason of the foregoing errors, and consonant with law and jurisdiction in his case.

(-igned) HAROLD CROWLEY,
By F. H. DEXTER,
His Attorney.

HON. RICHARD CROWLEY, *Of Counsel.*

United States District Court, District of Porto Rico, at Chambers, May, 1901.

Hon. Wm. H. Holt, U. S. district judge, holding court in which judgment was entered.

UNITED STATES
vs.
HAROLD CROWLEY.

Upon motion of Frank H. Dexter, attorney for the above named defendant, and upon filing a petition for the allowance of an appeal, and an assignment of errors, it is ordered that the petition for an appeal be, and the same hereby is allowed, and the appeal therein prayed is granted and allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond on said appeal be, and the same hereby is fixed at five thousand dollars. And that upon giving the same after service of citation the execution of the return be suspended and stayed until the determination of said appeal by the Supreme Court of the United States, and that a certified
23 transcript of the record and proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

Defendant is allowed until June 15th, 1901, to present bill of exceptions. The defendant's attorney desiring and asking an appeal, and not a writ of error, and insisting upon a right thereto, it is therefore granted. May 25th, 1901.

(Signed) WM. H. HOLT,
Judge Dist. Court of the United States for Porto Rico.

(Indorsement:) United States *vs.* Harold Crowley. Motion for order allowing appeal, assignment of errors, order allowing appeal, and citation. Filed. clerk's office. United States district court May 24th, 1901. (Sig.) Ricardo Nadal clerk of the court A. Aguayo.

And afterwards, to wit: on the 31st day of May 1901 the marshal of said district returned the commitment heretofore issued out of the clerk's office of said court with his indorsement thereon, which said

indorsement is as follows, to wit: Received this writ in the 21st day of May 1901 and executed the same on the 22nd day of May 1901 by delivering the body of the within named Harold Crowley to the keeper of the San Juan penitentiary together with a true copy of this writ. This at San Juan, P. R. E. S. Wilson, marshal. (Sig.) by John J. Miller deputy.

And afterwards, to wit: on the 22nd, day of June 1901, there was issued out of said court a certain citation which said citation is clothed in the words and figures following, to wit:

In the United States District Court, District of Porto Rico.

THE UNITED STATES
vs.
HAROLD CROWLEY. } Citation.

24 The President of the United States to the Hon. Wm. H. Holt, judge of the United States district court for the district of Porto Rico; Ricardo Nadal, clerk thereof, and N. B. K. Pettingill, district attorney of the United States for said district, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, to be held at the city of Washington, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the district court of the United States for the district of Porto Rico, wherein The United States are plaintiffs and appellees, and Harold Crowley is defendant and appellant on appeal, to show cause, if any there be, why the judgment in the said appeal mentioned should not be reversed or cancelled, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 22nd day of June A. D. 1901 and of the Independence of the United States the one hundred*th* and twenty fi*th*.

(Signed) WM. H. HOLT,
United States District Judge for the District of Porto Rico.
(Signed) RICARDO NADAL,
Clerk of said District Court,
By SAMUEL SOLOMON,
Deputy Clerk.

(Indorsement:) No. 221. Dist. court U. S., Porto Rico. United States *vs.* Harold Crowley. Citation to court on appeal. Filed clerk's office U. S. district court. June 22, 1901 Signed —— —— clerk of the court.

25 And afterwards, to wit: on the last day aforesaid there was filed in the clerk's office of said court in said cause a certain affidavit, which said affidavit is as follows, to wit:

In the District Court of the United States for Porto Rico.

F. H. Dexter, being duly sworn upon his oath, says that he delivered a copy of the foregoing sitation to N. B. Pettingill district attorney and Ricardo Nadal clerk of said court, June 22nd, 1901 and presented same on same date to Hon. Wm. H. Holt judge of said court, all in Porto Rico.

(Sig.) F. H. DEXTER.

Subscribed and sworn to before me this 22nd, day of J-ne 1901.

(Sig.) SAMUEL SOLOMON,
Deputy Clerk, U. S. District Court, District of Porto Rico.

And afterwards, to wit: on the same day last aforesaid there was entered on the order book of said court in said cause a certain order which said order is clothed in the words and figuers following, to wit:

In the United States District Court for the District of P. R., in Chambers at San Juan.

UNITED STATES
vs.
HAROLD CROWLEY.

Now on this 22nd, day of June 1901, before the Hon. W. H. Holt judge of this court, defendant Harold Crowley having served upon the said judge, upon N. B. K. Pettingill, district attorney, and Ricardo Nadal clerk of this court, a ciattion from the Supreme Court of the United States for an appeal to said Supreme Court in accordance with law, and thereupon and thereafter defendant presents a bond in the sum of five thousand dollars with the Fidelity and Deposit Company of Maryland as surieties the said bond is approved by the said judge, the appeal is allowed to the Supreme Court of the United States, and the filing of the said bond
26 shall act as super-edea- and stay of the sentence heretofore rendered against defendant Harold Crowley be released pending his said appeal and by agreement of the district attorney and F. H. Baxter attorney for defendant, the time for presenting and filing the bill of exceptions herein is extended to October 15th 1901.

W. H. HOLT,
Judge of the U. S. Dist. Court.

A true copy.

(Sig.) RICARDO NADAL,
Clerk of the Court,
By SAMUEL SOLOMON,

[SEAL.] *Deputy C., U. S. Dist. Court, District of Porto Rico.*

And afterwards to wit: on the last day aforesaid there was filed in the clerk's office of said court in said cause a certain bond which said bond is as follows to wit:

27 In the United States District Court for Porto Rico.

UNITED STATES
vs.
HAROLD CROWLEY. } Appeal Bond.

Know all men by these presents, that we Harold Crowley as principal, and Fidelity and Deposit Company of Maryland, as surety are held and firmly bound unto the United States of America in the sum of five thousand dollars, the payment of which well and truly to be made, we bind ourselves, our heirs executors and administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 22 day of June 1901.

The conditions of the obligation are such that whereas on the 21st day of May, 1901, by the consideration of the district court of the United States for Porto Rico in a certain criminal case, to wit:— a certain indictment against the above named Harold Crowley for stealing and taking a certain letter and the contents thereof while acting as postal employé, being criminal cause number 224 of the said court sitting at Ponce, the said Harold Crowley was adjudged and sentenced to four years confinement in the penitentiary at hard labor; and whereas upon the petition of the said Harold Crowley, the Hon. Wm. H. Holt, judge of the said district court of the United States for Porto Rico has allowed and appeal from the said judgment and sentence aforesaid and has ordered that such an appeal shall operate as a stay of proceedings under the said judgment and sentence and that the said Harold Crowley be admitted to bail in that behalf in the sum of five thousand dollars, above mentioned; and whereas said appeal has been allowed accordingly, and the citation in that behalf has been issued and served:

Now if the said Harold Crowley shall duly prosecute his said appeal and shall appear at all times to answer and fulfill any order of the said district court of the United States for Porto Rico, or of the Supreme Court of the United States and shall appear and render himself in execution of the sentence of said district court of the
28 United States for Porto Rico, if not reserved, or if reserved, of all orders and judgment of *of* the said court that may be entered and rendered therein; and if the said Fidelity and Deposit Company of Maryland will produce the said defendant whenever ordered and required to do so by the said court, then this obligation shall be void, otherwise shall remain in full force and effect.

Given under our hands:

(Sig.) HAROLD CROWLEY.
THE FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
By E. L. ARNOLD,
Agent, as per Power of Attorney Executed by the Officers of said Company on June 14, 1901, *and Hereunto Attached.*

Subscribed and acknowledged before me by E. L. Arnold as agent of the Fidelity and Deposit Company of Maryland and by said company by him this June 22, 1901.

(Signed) SAMUEL SALAMON,
Deputy Clerk U. S. District Court,
[SEAL.] *District of Porto Rico.*

Presented and approved and the defend*n*at Harold Crowley being present in custody of the marshal is in consequence of the execution of this bond released in conformity to its terms.

Witness my hand June 22, 1901.

(Signed) WM. H. HOLT,
Judge U. S. Dist. Court.

(Indorsemen-:) United States *vs.* Crowley. Cr. Tr. # 221. Bond for appeal and supers*i*deas. Filed clerk's office United States district court June 22d 1901. Ricardo Nadal, clerk of the court.

29 And afterwards, to wit: on the 29th, day of October 1901, there was filed in the clerk's office of sa*o*d court a certain stipulation for extension of time for bill of exce*o*tions which said stipulation is clothed in the words and figures following to wit:

In the United States District Court for the District of Porto Rico.

THE UNITED STATES
vs.
HAROLD CROWLEY. } Indictment for Embezzlement.

Now comes the United States attorney and at the asking and motion of defendant's counsel hereby stipulated and consents that the court may make an order in the above cause extending the time for the settlement of defendant's bill of exceptions for sixty days from the time when such period expired and that such order may be entered *nunc pro tunc* as of the day of the expiration of such period.

San Juan, October 29, 1901.

(Signed) N. B. K. PETTINGILL,
U. S. Attorney.

30 And afterwards, to wit: on the last day aforesaid there was entered on the order book of said court a certain order which said order is clothed in the words and figures following to wit:

In the United States District Court for the District of Porto Rico, Oct. 29, 1901.

THE UNITED STATES
vs.
HAROLD CROWLEY.

Order.

The stipulation by the United States district attorney, made upon the request of defendant's counsel, being now presented, it is ordered to be and is now filed and it is now ordered that the time for presenting and filing a bill of exceptions herein be extended for sixty (60) days from the date when such period expired, and this order is made now for then and in open court at the October term in San Juan, Porto Rico.

(Signed) WM. H. HOLT, *Judge.*

(Indorsement:) United — *vs.* Crowley. Stipulation for extension of time for bill of exceptions. Filed. clerk's office United States district court. October 29th, 1901, (Sig.) Ricardo Nadal clerk of the court, by, Samuel Solomon, deputy.

31 And afterwards, to wit: on the 14th day, of December, 1901, there was filed in the clerk's office of said court a certain bill of exceptions which said bill of exceptions is clothed in the words and figu*e*rs following, to wit:

United States District Court, District of Porto Rico.

THE UNITED STATES
vs.
HAROLD CROWLEY.

Case containing exceptions as op-osed by the defendant, Harold Crowley.

The indictment, demurrers, pleas, affidavits, and all other papers filed at the time of the presentment of the indictment in court at San Juan in April, 1901, and before and after the defendant pleaded thereto and during the continuance of said April term, 1901, shall be prefixed hereto as a part of this case.

And afterwards, to-wit: at Ponce in said district on the 13th, day of May 1901, before the Honorable William H. Holt judge of the said United States district court, and a jury, the aforesaid issue, so joined between the United States and said Harold Crowley, came on to be tried on May 17th–18th–19–20–21–, 1901, at Ponce aforesaid, at which time and place came as well the United States as said Harold Crowley, by their attorneys aforesaid, and the defendant being present in court the jurors of the jury aforesaid impanelled to

try the said issue being called, also came and were then and there chosen and sworn to try said issue.

Upon said trial the district attorney for the United States, to maintain the issues on his part, called Rafael Delgado, who being sworn as a witness and examined by the United States district attorney, testified:

My name is Rafael Delgado.

Whereupon the counsel for the defendant presented a written motion to compel an election of count in the indictment. Which motion was in words and figuers following, to wit:

"Now on this 17th, day of May, 1901, comes defendant by his attorneys Richard Crowley and F. H. Dexter — moves the court for an order requiring the district attorney to select upon which one of the three counts, or upon which two of said three counts he will proceed, for the reason that the said three counts, and at least the 1st, and secons counts, attempt to allege an offense based upon the same statute, but each containing different averments which tend to allege and declare upon other statutes."

32 The motion was over-ruled and the defendant excepted to such ruling.

On motion of defendant's counsel the court then granted defendnat's counsel leave to file another motion to compel election at this time before the introduction of testimony; which motion was in words and figures following, to-wit:

"Now comes defendant by his attorneys and moves the court, renewing his former motion, to require the district attorney to elect upon which counts he will proceed."

The court then over-ruled the motion and the defendant excepted to such ruling.

Witness Delgado then continued:

I am postmaster at Yauco and have been since November 1899. The Yauco postoffice is a fourth class office and is a money order office.

Question. On or about the 24th day of March last, state what if any, registered packages containing money were forwarded from Yauco postoffice?

Mr. DEXTER: I object to the question because it assumes there was a registered package forwarded from that office and there is no proof of it.

The COURT: He may state whether there was any registered package.

Mr. CROWLEY: May it please the court, I desire to object to it upon the further ground that under no section of the Revised Statutes upon which it can be claimed that this indictment can be framed is there anything in relation to a registered package.

I object further to the introduction of this evidence and the answer to this question, for the reason that in no one of the three counts of this indictment is there any allegation that this letter or package whatever it may have been, was deposited in any post office

of the United States, and there being no allegation to that effect this evidence is incompetent.

The COURT: I will permit you to prove that.

Mr. CROWLEY: Will your honor give us an exception?

The COURT: Yes, note an exception.

Witness continues:

Question. State whether or not any letter or package containing money was forwarded from the Yauco post office?

Answer. The letters with money come by registered mail. I register these letters.

Mr. DEXTER: I ask that that answer about registered mail be stricken out as not responsive.

33 The COURT: We will proceed with the interpreter as the witness does not speak English very plainly.

(Question repeated to witness by interpreter in Spanish.)

Answer. What day?

Question. On the 24th of March last.

Answer. I answered that these letters that carried money are registered, therefore the one that I am sure had money in it, or the one that I remember had money in it, was registered and went among the registered documents that I sent that day. It was a remittance of postal money. The register of which I speak that contained the remittance was numbered 171 and the amount of the remittance was $377.00. The remittance was prepared and the letter was registered on the 23rd, in the afternoon. I fulfilled all the formalities that are required to be fulfilled. On the morning of the 24th, it was sent off from the office to its destination, which was San Juan. It left Yauco in the train that leaves in the morning, via Ponce. It left the office about 6.30 in the morning. It was prepared on Saturday, the 23rd, in the afternoon. The remittance which I had to send was $377.00 I took the printed letter of remittance, which is printed for that purpose. I took the sub—being notes, bills and gold and I put them before me in order to begin the study of denominations. I examinened the denominations of the distinct values which I had to send, begin-ing with the checks. I remember there were four checks. I began to note them down in the remittance letter, making appear there the date of each of the checks the number, the name of the person in favor of whom it was drawn and the amount. Then I proceeded with the bills copying the series and the numbers and begin-ing with the highest denominations and going to the lowest. Then I wrote the number of the gold coins. All summed up amounted to $377.00. Then I signed this letter and I had to copy it for we keep a copy of these letters of remittance. Onced copied and signed I had to have a witness for it. Salvador Amill was there and I asked him if he would testify to my remittance and he said Yes. He came in there and sat down where I was—he was sitting in a chair and I was standing by his side—and we began to prepare the papers for comparrison and then we compared the values which were written in the letter of remittance with

the same values themselves. As I began with the checks in the order, the first one that I wrote became the last: I mean to say that the last became the first and in this order I left it in order that the comparrison might be easier. Then the witness began to compare the items with the remittance. We began with the gold which was the first as it had been the last. We counted the coins and I then put them in a small bag in his presence. I wrapped them up in a linen bag. I wound them up this way (indicating), and they were tied up and sealed with sealing wax. Then I proceeded with the bills, begin-ing with those of the denomination of one, after with those of five and after with those of ten, looking at the s-ries numbers: then the checks. Onced finished we added the values represented by them all of which resulved the sum of $377.00. Then the witness signed the letter in the witnesse' place, then he signed the copy which I put on the wire file where such copies are kept. I wrapped up the bills and checks in the letter of remittance and with these I put the little linen bag which contained the gold pieces and the whole I put in an envelope which I addressed "Postmaster" and I put the name of the town where it was going "San Juan." I shut it up and put sealing wax on it. I registered it then and when the formalities were finished about the registration of it, before the witness I enclosed it in an envelope on which I put the number "171" which was the number corresponding to this package according to the stub book for registered letters. I shut it and stamped it with the seal of the post office, which I put on top. The certification or registration being finished before the witness, then I looked to see if there were any more registers which had to be dis-
34 patched by the same route. My assistant had prepared two and I asked him——

The COURT: Never mind about that.

I noted down this package numbered 171 on a little card where the numbers of each package are noted down. There were two noted down which had been written by my assistant which were going also, and which had numbers preceeding this. I wrote down under these the other number, namely 171. I joined together the two to the third one which I had prepared and put the card on top with an elastic band and I put it then in a combination safe. I shut the combination and there they remained in the safe and we went out that afternoon. They remained there until the next day in the morning at the time the mail left Yauco and then they were taken out. My assistant, who despatched the mail that morning, took them out. I was there. I saw them taken out. (Witness shown a remittance letter.) That is the original I made. That is my signature there (indicating). That is the signature of the witness (indicating).

That letter is the one that went out with the registered matter. I signed two remittance letters and so did the witness. The one that was sent out and the other one, which is this one, which was

filed in the office and here (indicating) you can see the holes made by the file.

Letter offered in evidence, received, read and marked: "Exhibit A" for the United States, which letter was in words and figures following, to-wit:

(Here insert copy or attach original.)

35 Direct examination continued:

(Card shown witness by the U. S. attroney.) This is the same card that was prepared and in the office at Yauco and which accompanied the registered matter among which was No. 171. This is the card I have testified about and these (indicating) are the numbers which have been registered.

Said card was then offered in evidence by the United States, and received and marked "Exhibit D," which card contained upon the back thereof the words and figures following, to-wit:

"Received from the postmaster, whose name appears on the other side, the registered package described as follows:"

No. of package.	Postmarked at—	Date of postmark.	Name of P. O. addressed.
169	Yauco	3/23	New York.
170	"	3/23	Santurce.
171	" (not rec'd)	3/23	San Juan.
168	San German	3/24	Ponce.
605	Mayaguez	3/24	Ponce.
606	"	3/24	"
	D. A. S.		

Write signature.
Do not stamp.
Avoid blanks between entries and after last entry—(see section 1060, Regulations of 1893).

Robert A. Miller, P. M. or postal clerk.

Five
Signee will write here in words total of packages.

Direct examination continued:

In answer to Mr. Dexter, witness continues:

Once we finished making the one, the copy was made immediately. When the witness came both were made and he signed both. One of them was made copying the dates which are here and the values which I had before me, and immediately I copied it and retained the copy in the office. If I had wanted to have done it afterwards I would have had not-ing to copy from.

Direct examination resumed:

These objects shown me are envelopes which are used for enclosing registered mail. Exactly this same kind of envelope of the same size inside. Inside of that smaller envelope I put the bills and checks which were in the remittance, and the little bag which included the gold coins. There was only the envelope which contained the remittance included in the larger envelope when posted.

I put a seal on the small envelope (indicating), certifying the date with a rubber stamp, and also a seal on the large envelope, (indicating) and then I put the same stamp on it; and when I en- the small one inside the other, I stuck the other and put three seals or stamps on it. Both envelopes were closed and sealed on the afternoon of the 23rd.

36 The said sample envelopes so shown the witness were then offered and received in evidence, marked "Exhibit B" for the United States; which said envelopes are substantially described as follows, to-wit:

The smaller envelope belonging inside is of light manila paper, about 4⅛ by 9⅝ inches in size opening in the ordinary way, and having printed upon the front thereof in black ink the following:

Post Office Department.
Post office.....
Porto Rico.
Official business.

This envelope to be used for remittances only. Penalty for private use $300. Multa de $300. por uso particular.

Postmaster.....

..... county.

M. O. B.

The larger envelope is of somewhat heavier quality of manila paper, about 5 by 10 inches in size, opening with a long flap folding downward and two small rounding flaps folding up on the back, and having printed on the back side thereof in red ink the following:

U. S. P. O. D. registered package.

Be sure to seal this package securely, and to postmark it plainly.

Moisten the large flap and seal securely under the two small ones—then seal the small flaps firm-y outside in their places as shown by gummed surface.

Postmark of mailing office on date when mailed.

Postmaster at.....

County of.....

State of.....

37 In this remittance letter as the bills are in correlative order the series are correlative. That is the first series with the first bill, the second series with the second bill, the third with the third and so on.

The three ten-dollar bills were of the series 1880–1882. On the morning of March 24th when we took out this registered letter No. 171 from the safe it was in the same condition in which it had been placed in the safe the night before. Salvador Amill was present, in the little window, when it was taken out. He is the same I have spoken of as being the witness. Between six and quarter after six

we were there, Salvador Amil- and myself and we saw the enclosure of the registers in the bag and shut it up when we left the office. It must have left the office after we left, which must have been a quarter past six or after a quarter past six. It must have been 6.20 or 6.25. We were not there when the mail left. The train left at 6.45 that morning.

Cross ex. by Mr. DEXTER:

My assistant and myself were the only sworn employees in the office March 23rd and 24th.

My assistant was Antonio Delgado. He is my brother. He was then fifteen or sixteen years old. He had taken the oath of office before Notary Solis in Yauco. He had been assisting me in the postoffice something like six months. He was helping there and when I am there and cannot attent he is there; that is to say he helps me when I have to go out and cannot be there. I am not obliged to leave the office very often. I sent some checks on the 23rd when I sent this remittance package No. 171. One of them was in favor of N. Gatell of Yauco against De Ford & Co. and drawn via Noble.

Question. Had you accepted these checks in money order business?

DIST. ATT'Y: I object to the question as it — immaterial.

The COURT: I do not think it is competent.

Mr. CROWLEY: It is competent because it is forbidden in this letter of remittance he had before him. These checks were part of the money which it is claimed was embezzled. We propose to show that these were not moneys. They are alleged to be moneys in this indictment.

The COURT: I do not think it is competent. I sustain the objection.

To which ruling and decision the defendant excepted.

Witness continued: I began the preparation of this remittance after three o'clock, about 3.30; then I began to make them and prepare everything. The bills and checks were folded up into the letter of remittance and the gold was in a little linen sack, and they together were put into the envelope. The bag must be about that wide, (indicating) and folded up over the gold. It was just a little wider than the gold pieces. I put the coin in with the checks and bills in the small envelope inside, and closed and sealed it and then put it in the big envelope. I did not seal the big envelope. I stuck it. I said the witness signed the remittance letter on the 23rd, This package 171 was mailed the day it was made. The date that the registered package had was March 23rd, It was put on with a rubber stamp. It was taken out on the 24th, in the morning.

38 It left on the 24th of March from Yauco. These numbers, 169–170–171, which had their origin in Yauco and which were prepared there on the 23rd, were together in a box. In the morning my assistant took them out and he marked on this ticket

the other three which arrived that morning on the western mail from San German, Mayaguez, etc., and he also noted there three which made six that left there on that morning. The assist*nat* took the six and put the yellow ticket on top and tied them around with a rubber band. They were joined with this fine rubber band. They had to go through Ponce. That was the first post office in transit because they do not unload at Guayanilla.

I have always joined the seperate enclosures together with certificates that have to go with them and with the yellow ticket. I sent them that day as I always did. All the payments that I have made I have dated them the same day that I made them; all the remittances I made I put on the letter of remittance the date on which I prepared it. This letter of remittance is dated March 23rd, and all I send to San Juan I send by Ponce and I prepare them the day before and date them then and send them off the next day. That is my general custom. I understand English. I made the remittance the 23rd as I understand the paragraph to mean it is to be made the moment it is prepared. The safe we have is a combination iron safe that *that* we have always had there. When I am not there, when I am out, my brother manages the safe. No one else about that time went to it. When I put package 171 in it on the afternoon of March 23rd, I had in it whatever is kept there, the statements, money, etc., I put package 171 in the safe between four and five o'clock in the afternoon. Finished copying letter about four o'clock. I usually closed the office about five o'clock. I put the three packages in the safe myself. I am quite sure of *r*hat. I got there the following morning about six o'clock. My assistant opened the safe that morning. He is my brother and as-istant. On the morning of the 24th, I got up with the object of going for a walk with a girl who was there in Yauco which we had projected and when I got up I went to the post office and was there for a little while. I got there and stayed there a little while and then left with Salvador Amill. That was before the mail was dispa-ched from my office to go to the train. After closing the bags or pouches my assistant remained there writing some addresses on some empty sacks. We left and he remained there alone as he delivered the mail every day and the conductor takes it from him every day there.

Mr. Amill was in the little window when I attended to the closing of the pouches. When I arrived at the office that morning the ordinary mail had been already finished and when we arrived there my brother went to the safe and got out the registered mail which was the last thing he put in the bag. After having dispa-ched the letters and other things he went to the box for the registered matter. After having put the sacks and registers in a bag and shut and locked the bag he threw it in the place where every morning the conductor gets th-m. There was one post office key to that sack in the office being in a box on one of the tables of the post office where we received the mail. A wooden box. There are some boxes there with the addresses of the letters in front, open where the letters are

but it has two drawers and in one of these drawers were the keys. These drawers have no locks.

The conductor who was assigned to the duty of carrying the mails at that time from Yauco post office to the train was Anselmo Rodriguez.

ANSELMO RODRIGUEZ, being called by the United States, and sworn, testified, through an interpreter, as follows:

My name is Anselmo Rodriguez. On March 24th last I was mail conductor from Yauco to Ponce and I was in actual charge
39 that day between these points, and also in Guayanilla. In the morning I first took charge of the mail in the post office in Yauco. I arrived there at the post office on the morning of the 24th, at 6.15 and the mail was delivered to me. There were three pouches from Yauco, one from Guayanilla, two for Ponce and an empty bag. I found Stephens in the post office at Yauco that morning. I am giving his name. He is English. I know the postmaster at Yauco. His name is Don Rafael Delgado. He was not there when I took the mail that morning. His assistant, Antonio Delgado, was there. After taking the mail I left a pouch at Guayanilla and then I went to Ponce with the rest of it. I took it that morning from the post office to the railway station, and then continued on the train in charge of it. None of these pouches were opened while in my charge. When I arrived at Ponce I delivered tham to Stephen, the man who was in charge that Sunday. It was Sunday. Stephen is employed by the postmaster. I don't know his full name. I did not have in — possession a key to any of those pouches. No one on the train had a key to any of those pouches, to my knowledge. On the train is a coach. I have two seats. One there (ind.) and one there (ind.) and I am sitting here (ind.) and the pouches are in the middle and I am over the pouches. I remained seated over the pouches that morning all the way.

Cross examined by Mr. DEXTER:

On that Sunday morning I staid in Yauco a half hour. I took the mail pouches off the floor. I have a ltttle push cart and I put them in the push cart and pushed it to the train. They have the customary names on them "for Ponce" "for Guayanilla," etc.

They were all alike, except one that came from Mayaguez I counted that morning, There were four and an empty sack. I knew it was empty because it is one that goes to Yauco and comes back empty. I did not know that any of those sacks had registered matter in them. There were no other postal employés on the train that morning except myself. I have taken the oath as an officer administered by the postal department. I could not distinguish those sacks now that were taken by me on the train that morning as there were several of them. I got the sack from Guayanilla, between Yauco and Ponce. I always notice the locks on all the pouches before they are handed to me before the postmaster before

I leave. I did it that Sunday morning before Antonio Delgado. I went in the conductor's coach on that train. There were several passengers in the coach but as I sat on top of the mail nothing happened to it. It was a coach in which goes various passengers and it goes next to the engine where they put the baggage. I did not get off the coach at Guayanilla. A policeman brings the mail there. When I arrived at Ponce I took the mail from the station to the postoffice with the little cart I have. The train arrived at the station at Ponce at 8 and I arrived at the postoffice at Ponce at 8.15. It takes about fifteen minutes from the time the train arrives at the station to get to the postoffice. The time is about five minutes in a carriage but not in a little push cart.

The cart was at the station when I got there. It took an hour and a quarter that morning to go from Yauco to Ponce. The postoffice at Ponce was not open when I arrived but it was quickly opened by Stsphens. No one was there but Stephens and myself at the time. I remained there only the time it took me to sign the book. I delivered the mail pouches to Stephens. He left them on the floor. No one else was there. when I went away. I left about 8.20. I did not see those pouches again after I left. Stephens is the janitor of the postoffice.

SALVADOR AMILL, being called as a witness by the United States and sworn, testified as follows:

40 My name is Salvador Amill. I am a law student at Yauco. I was living there on March 23rd.

Paper shown witness.

That is my signature. I remember when I signed it. I know that this is an invoice of the sending of a remittance of postal orders, bills, gold and money. On the afternoon of the 23rd. of March of this year I was at the post office at Yauco with the object of buying some postage stamps. While there I met my friend Pedro Mariani and was talking to him while the postmaster was attending to some of his affairs. The postmaster asked me to act as a witness. I went inside and sat down with the postmaster standing at my side. He showed me this invoice with the checks, bills and coin for me to count that I might see them closed and dispa-ched. Then I took the coin-d money which was the first thing and saw that there was in truth a five dollar gold piece and that in the invoice was noted down one five dollar gold piece. I counted twelve pieces of gold of ten dollars each and I saw that they were noted in the invoice. Then I counted a roll of bills of one dollar each amounting to $42.00 and this same sum was expressed in said invoice. I saw that there were six bills of five dollars each and noted that the corresponding sums and numbers were marked in the invoice. There was a check for $60.—two checks for $30 each. The highest denomination of bills was ten dollars. There were three of them. There — six fives. The gold pieces were put into a bag about ten inches long and were then folded over in the bag thereby making a

package, the same bag serving as an outer wrapper, and then it was sealed with wax. The bills were then taken and tied up with the invoice and sealed with wax. Both packages were closed and a rubber band put around them. They were placed inside an envelope and addressed to the postmaster, San Juan. This envelope was placed in another envelope which had red letters. Then he took it and put it into the safe and locked the safe and we went out into the street.

(Witness shown "Exhibit B.")

I have seen an envelope like this before. Three times I have seen them in three remittances I have signed for before this one; I signed for two. I think this is about the same as the others; there was another one.

Inner envelope shown witness.

Yes, that is it, and the number was put down there, (ind.). There is a stamp put there. (Ind.) No; I think it is there (indicating another place) but I am not sure.

Number by number and letter by letter of the series were compared by me and I have counted the gold pieces also and have seen the checks also and their values and addresses. I went to the post office the next day about six o'clock for the purpose of getting the postmaster to go for a walk which we had projected with several lady friends of ours. Then I had occassion to see how the assistant took out of the box the remittance of the previous day, united with the two more and the three with a rubber band, and that with three other packages which he brought from another place. He then placed them in a bag after having made a note of something on a ticket which I do not know much about. After putting them inside the bag he locked the bag and then immediately we left. This bag had a flat lock with a small key. It locked for itsself with a spring but the key was used to unlcok it. On the afternoon of the 23rd, I staid at the office to about a quarter after four, I think. The postmaster and I left together. The assistant remained, his brother, Antonio.

Cross examined by Mr. DEXTER:

I do not understand English. The printed contents of
41 that letter of remittance when I signed it was translated to me by the postmaster himself just the same as the citation to appear before this court was translated to me. I think I had signed one similar statement previously. The letter which was sent out on the morning of the 24th, was addressed to the postmaster of San Juan on the first envelope. I do not know how the large envelope was addressed. The envelope where the — was enclosed was addressed to San Juan also. I know the little one was addressed to the postmaster at San Juan, but about the big one I am not positively sure. When the little one was addressed to the postmaster at San Juan it was put into a larger one like this, (indi-

cating). I know that the smaller envelope was put into the larger one and that I saw it put inside the safe. I know what I have said before, that the next day in the morning I saw the same envelope taken out of the safe and put into a small pouch, which was locked before me. The large envelope was addressed when I saw it at that time, in the morning, to San Juan. I am completely positive about that. I am as positive of the fact as of any other fact to which I have testified here, that the large envelope was addressed to the postmaster at San Juan.

The order I proceeded in counting that money was there was a five dollar piece that I examined. I saw that it was five dollars and put it on the table, and then I took up a package of gold coins and counted them and found that there were twelve, and each one had a value of ten dollars and then I looked on the invoice and saw that there were twelve coins of gold and of the value of ten dollars each.

I began on the bills, with the dollar bills. Next in order were the five dollar bills and then the tens and then I took up the three checks of $30 each. When I counted a bill I looked at it and I saw, for instance, that it was for one dollar and as the one dollar bills had no series or numbers I had to count them one by one until I reached 42. I examined five and ten dollar bills number by number and letter by letter but I did not have the curiosity to find out how many numbers and how many letters were on each bill.

Shows witness a ten dollar bill.

I do not remember which number I took. The one up here or this one down here (indicating). I took the numbers and series of the bills. The series is the letter that the bill had. The bill says: "Series No. and 80 I am never in haste in this world in any affair. I carry everything with great calm. We were neither in haste nor slow to get away from the post office that morning. As soon as we had finished our business we left.

JAMES STEPHENS, called by the United States and sworn, testified as follows:

My name is James Stephens. I am janitor in the post office and have held that position a year and some months. Over a year here in Ponce. I arrived at the office Sunday morning the 24th of March, at 8.14. No one was there when I got there. I am accustomed to open the office in the morning. The first thing I do is to start to clean it. The first person to come to the office that morning, after I got there was the carrier from Yauco with the mail. His name is Anselmo Rodriguez. I had been there about a minute when he came. He arri-ed there at the usual time, and that is why I got there just a minute before, He stayed about a minute after he signed the book and delivered the mail. He did not leave me alone. The moment he was going out Mr. Crowley came in. Crowley was the dispatch clerk in the office. He is in court. (Witness points to defendant.) After Crowley got there he asked me to open the mail

and I opened it and dumped it on the table and he went to
42 it and took the registers out and went to the box and locked them up. I mean the mail from Yauco. There were four pouches and a sack. A pouch is larger then a sack. I had not opened any of these sacks at the time Crowley came in. The mail was still on the ground where the carrier threw it. These pouches were unlcoked with a key. I got this key from a dr-wer in a table, the stamping table. that is where they were accustomed to keep it, on a long chain. That was not the same table on which I dumped the mail. was on a small table at the side of it. I dumped these four pouches one by one; not altogether I would dump one pouch and then take another pouch and dump it in four different piles. Crowley only said to me to open the pouches and dump the mail. I only open the pouches when I am told. After dumping the mail on the table I went and hung the empty pouches on the rack. The rack is in the same division, a couple of yards from the dumping table. While I was putting the pouches on the table Crowley was keeping the registers together. I had not handeled the letters at all previous to taking the pouches and hanging them up.

He was at my side at the table when I was taking the pouches and dumping them. He did nothing else before he picked out the registers and took the registers over to the box. It is a large, square box they put the registers in, twenty feet from the table on which I dumped the mail. I did not have a key to that box. There was not any in the post-office to my knowledge. After Crokley put the registers in the box he dispa-ched the mail from Yauco. Crowley and Mr. Salicrup had keys to that box—nobody else. He did not leave the box open—he locked it. It had a snap lock, what we call a pad lock with a spring in it and a snap and you have to open with a key but it locks itself. After he had taken the registers out none were left with the other letters. I saw no *to*her registered packages that morning exceot those Crowley took up and put in the box and locked. I received no other mail that morning from any other point. I had not started to clean up when he came in. I cleaned up a few twines that came from the mail that morning. I did not stay long as I wanted to go to church. I do not work much in the post office on Sunday. I staid there that morning about five minutes after Crowley left. He staid about ten minutes. He left about 8.25 that morning. After he put the registers away he went and dispa-ched the mail. He did nothing else during those ten minutes. He then went out and in about five minutes I went out. No one was left behind. I then locked the office. I went back that day at 11.20 bec*ause* the San Juan mail, is due there at that time. I met the mail carrier just outside the door. I had to carry it in. There was other mail in there on the floor inside. It came to Ponce from Adjuntas. I had not received that mail. I don't know the number of registered packages that arrived in the mail from Yauco that mornin*b*. I never saw them. I do not know how many there were. When I came back at two o'clock I heard that a registered package

was missing that day in the office. At no time that day did I hear discussed in Crowley's presence the loss of any registered package.

Cross examined by Mr. DEXTER:

When I opened the Yauco mail this morning I did not pay any attention at all to the letters that were in the pouches. I simply shook the contents of the bags on to the table without fixing in my mind or paying any attention as to whether there was one kind of letters there or another kind. I do not know whether that package that is referred to by the district attorney was in that sack or in Ponce. I dumped on the table the mail that came from
43 Yauco which was opened by me and taken out of the sacks. Crowley was at my side and when I dumped them he took the registers from among the mail—the other letters—I do not know how many he took or what he took. I saw him taking the registers. He put them in the box and dumped the letters and left it. I did not see him go into the box after that during the whole time he was there after putting those packages and letters in the box and locking it. He then went back and began to distribute the mail and continued at that occupation until he left. There is a spring lock upon the box, a snap lock. The box is wooden. This is the box. (Indicating a large wooden box which had been brought into the court room.) He took the packages from there (indicating) from under this arm (the left one) and put them down in there (ind. a place in the box) and closed the box and locked it, and went away to distribute the mail. Just long enough to open it throw them in, close the box and go away.

The key I opened those pouches with that morning is attached to the stamping table by a chain and remains there all the time. I took that key and with it opened the mail pouches. The clerks in the mailing department were in the habit of opening the mail sacks with that key and would open the island pouches with it. It was hung on a chain, attached to an inside drawer of the stamping table. No lock on that inside drawer Could get it without any trouble and open the pouches. Crowley was about 16 feet from where I was standing when he put the registers in because I was then hanging the empty pouches on the rack. I saw him all the time. I had opened the mail pouches before this Sunday morning with that key. I did it whenever I was told to do it, which was not often.

ROBERT A. MILLER, called by the United States and sworn, testified:

I am acting postmaster at Ponce and have been since January 8th, 1899. Have exercised the duties of the office all the time since. I was at home March 24th, last until two o'clock, in Ponce.

Witness produces a plan or drawing of the post office interior. That box, (indicating wooden box previously testified about) was provided for the purpose of putting registered mail in.

Map shown witness.

This is the entrance for the clerks to the post office at the second and third door to the rear (indicating). This is a court in the rear here (indicating). The outlet to that court is through this entrance and onto Iuna street. This is the table here (indicating). Here is where the key is kept hung on a chain (ind.) and there is the rack (ind.) I drew this map myself.

Offered and received in evidence. Marked Exhibit "C" for Gov't.

The dispatch clerk, or mail clerk, opens the mail pouches when they come in. Harold Crowley was the mail clerk at this time. He was employed in the postal department at that time and was on duty on March 24th. Mr. Salicrup alternated with Crowley. He was the other clerk. The registers were not always kept in this box only between the time of the arrival of the mails and their delivery to the register clerk, and after the dispatch of the mail when the register clerk delivered them to the dispatch clerk. Crowley and Salicrup had the keys to the lock of that box. They were
44 the only keys to that lock. From the west the mail comes to Ponce from Yauco. Arrives generally about 8.15. These two points are on island of Porto Rico. If a letter was mailed at Yauco for San Juan it would go from there to Ponce and then from Ponce to San Juan over military road. Going over that route it would be unloaded at Ponce post office.

So far as I know no one except the postmasters between Yauco and Ponce had a key capable of opening pouches going by mail between those places—either on the train or anywhere else—except in the post office at Yauco and Ponce. Crowley had been dispatch clerk in the Ponce post office somewhere from about Feb. 20th or the 25th.

Cross examined by Mr. CROWLEY:

There are six regular places where people can get in and out of the post office on the ground floor. On Sunday generally in the morning they are locked. The front of the office is not opened Sunday morning. People have boxes there but they do not enter on Sunday morning. The office is opened on Sunday at 2 o'clock. These doors in front are not kept opened after 2 o'clock. The back doors are opened in the morning to work the mail. The[y] get to the back doors from the street through the entrance to the court yard. Any other person could get into the court but not into the post office. Of course he could get into the post office if the doors were unlocked. There are two pairs of doors and they are bolted or hooked. One is hooked and the other is locked with a hasp to the lock. It is a pad lock. My attention was first called to loss of this registered package 171 about 2.30 o'clock on Sunday afternoon. I was then at the post office. Mr. Skinner called my attention to it. Mr. Skinner, Salicrup, Stephens and James Oppenheimer and the letter carriers were there at that time. I telegraphed to Yauco that day to the office there asking if the package had been dispatched

and then telegraphed to San Juan or attempted to do it but could not on account of the telegraph office there being closed—and then I wrote to San Juan that the package was missing. I did not see any of those packages that came from Yauco to Ponce. When I came into the office they had been given to the register clerk Mr. Skinner. They were sent out of the Ponce office at seven o'clock that evening. So far as I know they remained in the Ponce post office from the time they came in after eight o'clock in the morning until they went out in the mail at seven o'clock in the evening. I have no personal knowledge as to how these packages were done up when they came into the post office. I did not see them at all. I cannot say whether package 171 ever came to the Ponce office or not.

DAVID A. SKINNER, called by the United States and sworn, testified:

My name is David A. Skinner. I am assistant postmaster. On March 24th, last was register clerk. That was Sunday. I was register clerk in Ponce post office. I went to the post office Sunday, March 24th, about 12.30 to make up the registers and dispatch. Salicrup and a carrier were there. I opened the safe. I asked Salicrup for the registers and he gave them to me, stating that there were eleven. I looked at the register bill and told him there should be twelve. We then checked them all up and found one missing—number 171 from Yauco. On Sunday the registers from Yauco arrived in the office about 8.30 and are taken charge of by the mailing clerk and put into the box. Harold Crowley was mailing clerk that morning and that was his duty in that capacity that morning. The registers are put into the box and locked. That is the box (indicating) and when the time comes to make up the dispatch and all the mail is in I go up to make the dispatch and ask the clerk in charge to give me the registers. Salicrup was the clerk in charge. I asked him to give me the registers and I checked them off and delivered them again to the clerk. I do not know in what shape the registers were when they arrived. When given to me they were all loose. This card (s-own witness) is a registered package receipt. I saw this particular one before this time. That is the register bill of the registers of that day from Yauco. It was not, when I first saw it, marked up as it is now. Only the writ/ing in ink was there on it. These pencil marks have been made since. I made them. I check off these cards by numbers one by one and make the check here, (ind.). That day we checked them twice and this (ind.) is the secons check. I marked that item out altogether as not being received (indicating straight line across 171). I wrote the words "not received" down in the corner here where the number 5 is, that shows the number of registers actually received. The number of the package that I crossed out is number 171.

This card heretofore offered and received in evidence and marked "Exhibit D" for Government.

I never saw registered package No. 171. I never had it in my possession.

I know Harold Crowley. I remember seeing him that day at the post office when I was there in the neighborhood of three o'clock. That was the first time I saw him there that day. I had seen him previous to that in a coach up at the plaza. I was in Mr. Kahrman's store just below the Tropical house on Marina street. That is on the same street with the post office. One block from the post office building. It is between the post office and the playa. It was between quarter to ten and ten o'clock. He was coming from the playa. I do not know whether I did or not see him again. I am not sure. I think I saw the carriage again with him in up in front of "El Cometa" I thought it was him by the suit he wore. That is between Comercio and Amor streets and one street down. The carriage was going on up towards the plaza. If a carriage had been coming from the post office it might have been going in that direction.

Cross examined by Mr. DEXTER:

The first knowledge or information I had of this registered mail that came from Yauco on the morning of March 24th, last was what I received when I went to the post office that day at 12.30 o'clock. I did not then go to the box. Salicrup did at my request and handed me the packages—eleven al/together. After I checked them off I first discovered there was a package missing. No other employé in the department or under my control discovered the absence of the package before I did.

By the COURT:

Question. What time was that? About three o'clock.
Answer. No, 12.30.

Mr. DEXTER, resuming:

Crowley and others were in a carriage, and they were moving on with the horses in the usual lope, coming up from the playa. I was standing in the door of Mr. Karhman's office and I saw the carriage drive on by past me. I di-n't see how far it went.

Re-direct:

I do not know whether the carriage continued straight on up Marina street or whether it turned. When I stepped out on the sidewalk, about ten minutes afterwards I think I saw it in
46 front of the "Cometa" That is between Amor and Commercio I did not watch the carriage to see if it turned. I saw standing in the office and only saw it when it passed.

ROBERT A. MILLER, recalled by the United States:

Crowley came to the post office at Ponce as an employé, somewhere between the 20th, and 25 of February. He came as clerk in the post office by authority of order of the Post Office Department,

in charge of Lawrence Letherman, inspector in charge, San Juan. I had no discretion in the matter.

JULIO SALICRUP, called by the United States and sworn, testified: My name is Julio Salicrup. I am 21 years old. During March last I was employed in the post office at Ponce. On March 24th I was on a vacation. I know Harold Crowley. I saw him that day. I met him about 10 a. m. in the café of the Casino and we had a drink there. He requested me to go to the post office that day and receive the San Juan mail for him as he wanted to go to the Quintana baths. Sometime about 11 I went to the post office to see if the mail was in and found it there. I had no key so I went back to the house to get it and when I returned I found that Stephens, the janitor, had already opened the office and received the mail. I staid there a few minutes. The mailing clerk was on duty, Mr. Crowley. It was customary for the janitor to be there. I got there a few minutes after 11. I did not work while there. Stephens staid there the longest. I left him there. I was supposed to help Crowley in the office in everything. Skinner had charge of the registers. I have seen this wooden box (ind.) That is the box where the registers were put. Crowley and I had the keys to it. I did not go to the box when I went into the office about 11 o'clock. I came back to the office that day about 11.45 o'clock to work the San Juan mail and I staid there until 4.30. I did not go to this box to which I have the keys when I came in. I went to it first about one o'clock. Skinner asked me for the registers. I found it locked and I opened the box and took out the registers and gave them to him. He counted them and *and* found there were only eleven registers and he called my attention to the fact that there should be twelve, and we counted them over and found there were only eleven in the box, one being missing, a register from Yauco, No. 171. Whenever the register clerk is out and mail comes in they open the mail and take out the registers and put them for safe keeping in the box and they stay there. The registers are kept in a sort of a little shelf in the box, not down in the bottom. The registers were loose in the box no two of them tied together. Two of these cards, "Exhibit D" were in the box with the registers. I recognize this as one of them. I think I saw this particular card before. in the box with the registers. I took out the registers and gave the card to Skinner. I counted them and found there were 11 packages and he told me there must be 12, so I counted them again and found there were only 11, and then I told him to report it to the postmaster. I found that No. 171 was missing because we went over the numbers. I have never seen registered package No. 171—never had it in my possession or any part of it or its contests.

The mail is due from Adjuntas on Sundays. One was due that Sunday, March 24th. It gets here at 11 o'clock. I did not receive that mail that morning. When I went to the post office I found it in the office. I went there about eleven o'clock. It had not been worked. The pouches were there, only one pouch. I did not leave

Ponce that Sunday or during the three succeeding days. I
47 had fifteen days' vacation. I did not leave Ponce during that vacation.

By the COURT:

Question. The court is not very familiar with the mail service. When several packages come in in that way is there anything that shows to a person handling them which is the most valuable or what the value of each is?

Answer. No sir. Nothing.

DIST. ATT'Y, continuing:

Crowley ceased to perform his duties in the post office that very night of March 24th. He was supposed to leave Ponce that night. He told me he was to leave that night. I did not see him after that night in Ponce.

Cross*ed* examined by Mr. DEXTER:

On that morning of Sunday the 24th, mails arrived at Ponce post office from Yauco Adjuntas and San Juan. The Adjuntas mail was brought in by carrier. I don't know how he brought the mail that day. I did not receive it. I was not there.

The carriers generally stand in the door-way of the post office and throw the pouches in. They never come inside.

I have seen, with the permission of the postmaster, mail carriers or outsiders in the post office but not when they did not have that permission. Ex-employés and others come in and sign the book and go*o* right away. Stephens had not been in the office alone, so a*fr* as I know, practically all the morning—not exactly. I did not think he was in the office but a few minutes after I left. I left a few minutes after eleven. I did not see him afterwards until I saw him at 2 o'clock. I don't know as a matter of fact, what happened in the post office. I cannot state possitively who went into the post office, or at what time Stephens left it.

When I first went to the office I found the San Juan mail in the hallway and when I went to get my keys to the office Stephens was in the doorway receiving the mail. The coachman for the San Juan mail throws the pouch in and comes and signs the book and then goes out again. The three rear doors in the post office are used for entrance and exit and also the three in front. All these doors have not locks. Some of them are fastened from the inside with iron hooks like most of the doors in Porto Rico.

Question. Since you have been in the post office there have not there been other packages or articles missing?

Judge PETTINGILL: I object to the question as it is immaterial.

The COURT: I sustain the objection. Proceed.

Mr. DEXTER: Please note an exception.

It is a fact that all of the mail pouches which were in the office on that Sunday, the 24th, as well as all other pouches of mail which were brought into the office prior to that time could not have
48 been opened by a key which hung in there on a chain, and anyone who knew where the key was, who happened to -om*b*e in the office could take that key, and open any pouch in there, if he wanted to? The lock on the wooden box was one of these spring locks—the kind you snap when it is open in order to close it. was ordinary pad lock such as are commonly sold in all the stores—same style. So far as package No. 171 is concerned I have no personal knowledge of its ever having arrive- at the Ponce post office. If you are to send three, four or five registered letters to San Juan they are required to be enclosed in a large outside envelope a registered package envelope, and that is sealed.

Re-direct:

The regulations say that if a postmaster has more than one registered letter for a place that he can enclose them in a registered package envelope—it all depends on the size of the letter.

MARIANO GONZALEZ, called by the United States and sworn, testified:

My name is Margaro Gonzalez. On March 24th last I was in the post office in Ponce I had no connection with the office nor perform any duty in the Post Office Department at that time. I did nothing that morning but remain until they opened the post office, at the entrance door of the post office. It was shut. I desired the post office to be opened in order to deliver the correspondence which was there and which I carried from Adjuntas. I had brought some mail from there that morning. I can not tell how many packages. I brought one pouch only. It must have been half past nine when I arrived at Ponce post office. I found it closed. I had to wait and it was opened within five minutes. A gentleman opened it. I would not know him if I were to see him again. I did not fix my mind on him. I do not know him. He was tall and big and stout. White complexion. I did not well see the head, it was covered with a hat. He was completely shaven. He belonged to the United States in nationality. He came to the post office in a carriage. I do not know in what direction he came but I know he turned around Mariana street. He stopped there and at once went to the door of the post office and opened it and at the same time I went in. I did not notice how he opened the door. He was very quick about it. It was the door in the back of the post office. I delivered the mail pouch to him. He took it and put it on the table. I then turned my shoulders and went into the street. He did not come out with me. The coach in which he came was opposite the entrance when I went out. This gentleman here (indicating Crowley) looks very much like the American I saw at the post office that morning. His features are very much the same as the other.

Cross examined by Mr. DEXTER:

I do not recognize the coachman who drove the coach that the American was in. Have not seen him about this court room since I have been here. I did not fix my attention upon the coachman. I arrived at Ponce at 9.30 in the morning. I had no watch, did not look at the clock. I was asking about it and heard people asking each other. I don't know the man I asked. Asked only one person. I was on my way from Adjuntas to deliver the mail here in Ponce and as I passes through the Plaza de Delicias I asked the man. He told me it was 9.30 o'clock. Was a little below the Alcaldia. I do not remember who the man was. He did not come in the coach with me from Adjuntas. He was a man of middle age. He had no watch. He told me it was half past nine. I thought so because he told me so, that was the time, that is the only means of knowing. I watched the post office about five minutes before somebody came to open the door. I was standing in the doorway
49 at the entrance there, at one of the steps there. I put the mail down and sat on it. I had not passed through the gateway or the doorway and got into the "saguan." It was right in the entrance. I was sitting down in the sidewalk. I did not see from where the coach with the American came. There were other gentlemen in the coach. I could not identify them again. They were Americans. I am sure of that. I have never seen them since. This gentleman alone was in the post office when I went in with the mail. He went ahead and opened the door for me, the second door I think. I am not sure because I did not notice presisely Have not been in the habit of going in that entrance in carrying the mail. I can not tell where he took the *took* from with which he opened the door. I did not see it. I did not see anybody else around I remained in the patio I did not go in the post office at all. They gave me no receipt for the mail that morning. They gave me nothing. I staid around there no time at all. Staid just long enough to deposit the mail and go right out and that was the last I saw of the mail or the American.

SANTIAGO BARROS, called by the United States and sworn, testified:

My name is Santiago Barros. I am a coachman by occupation. I do not know Harold Crowley. I have seen this gentleman before (indicating Crowley). I first saw him in Ponce. I do not remember whether or not I saw him on March 24th. I saw him on a Sunday about that time, about the latter part of March. I went with him in a coach that day, driving. I am a licensed coachman here and belong to the line. On that day I first had him in my coach about eight o'clock in the morning. I picked him up at the Tropical house. Went first to the playa. He took a trunk to the playa in my carriage. I next went to the house of Morales in the playa. Then went to the house of Avelino Gonzalez in the playa and after that we went to a coffee house in the playa. From there we came to town. From the time we left the Tropical house until we got

back to town we were gone half an hour. Sat in the café four or five minutes. When we came back to town went first to the post office. There were two others with this gentleman in the carriage. He went into the post office. He staid there four or five minutes. It was from nine to nine thirty, in the morning as near as I can fix it. Coming from the playa to the post office we took Marina street. We stopped on the Luna street side of the post office. Neither of the other gentlemen went into the post office with this gentleman here. From there we -ent to Castillo street. Stopped there about five minutes. Then we went to the café of the Casino. Sat there about ten minutes. Then we went driving about town Next stopped at the Frenzh hotel. It must have been between 11.30 and 12 o'clock. I, left them there. At one o'clock that day I took him up again. Went driving about town until 6 o'clock. These other two gentlemen were with him during the afternoon. We went to the Quintana baths outside of the town. I do not remember if we stopped at any place in town during that time. I left this gentleman at the Tropical house at six o'clock. The pay for the trip that day was between him and the other two. He gave me the money—$10.—a gold coin, a ten dollar gold piece.

Cross ex. by Mr. DEXTER:

It seems to me when we returned from the playa and stopped at the post-office the doors were open because the Adjuntas mail was there. Didn't see people coming out of the post-office with letters. We stopped there four or five minutes. I did not see anybody else around there at that time. I saw a coachman or mail carrier from Adjuntas. He was there with a bag of mail. I do not know whether he was arriving or leaving. I am not sure of that. It seems to me as if I did see him go inside the post-office. I saw a postman there. Don't know whether or not it was a postman that went in. I am not sure I saw the door of the post-office open. I know the mail was there but do not know whether it was going in or coming out. The mails had been taken inside. I left the Tropical house between a quarter to eight and eight o'clock. Morales' house was the first place I stopped. I do not remember if I stopped at the house of an American gentleman on the way down. When I got to Morales' place the store was open. Crowley stopped there the time it took him to get there and speak a little and give him the trunk. It must have been a quarter past eight when I arrived at the Morales house. Stopped at Morales' something like fifteen minutes. The trunk was left there. Inside of Morales' house I saw the clerk who was the one who came to the door. His name is Emilio Morales. The next place we went to was Avelino Gonzalez's place. I went in the carriage and waited there. I do not remember seeing Mr. Renter there that morning. I do not remember seeing Mr. Manuel Ramon Morales because I remained in the carriage. I did not notice anything. While they were in the café other gentlemen came up and sat down and took drinks with them, but I do not know them and cannot remember them.

50 They staid there a good while. They did not seem to be in a hurry to get away from where they were. When the stop was made at the post-office and Crowley went in I did not see him return with anything. Crowley did not leave the coach at any time except to go into the café on Castillo street and into the Casino, except when he went into the Hotel Francais. I do not remember if we returned to the playa again after that. I do not think so. I was in company with, or close to, Crowley during all the morning or until they went to breakfast at the Hotel Francais.

Question. During all of that time, all of the day that you were with him, did you see any evidence of any package that appeared to contain money, or anything of the kind in his possession?

DIST. ATT'Y: I object to the form of the question.

The COURT: I sustain it: proceed with something else.

I did not see on the person of Crowley any package containing money or other valuables after he left the post-office.

I did not see him spending money very lavishly that day. He said something about giving a farewell because he contemplated going away. He said that early in the morning.

Re-direct:

I did not notice but as I saw the mail there I think the rear door of the post-office, the door leading into the post-office, was open and he went in so quickly and left so quickly I thought the door must have been open. When I drove up there the mail from Adjuntas was there inside. The man in whose possession it was had the bag in his hands.

THOMAS E. LEE, called by the United States and sworn, testified:

My name is Thomas E. Lee. I live in Ponce. I know Harold Crowley, the defendant. I met him about March 24th last, can't tell exactly the date. It was on a Sunday. It was in the café opposite the post-office a few minutes before the mail left. The mail left at 7. I was sitting in the café door and Mr. Crowley invited me in to have a parting drink as he was leaving. That is the café opposite the post-office. It is on the next corner from the Tropical house; same block. Well, we had a drink and afterwards we had another round and Mr. Crowley told me he was going to Buffalo, and invited me, if I went to Buffalo Exposition not to fail to call on him. There were Mr. Kahrman and another young man whose name I believe is Chalk present. There was nothing further. Mr. Crowley was sorry to leave. I was sorry that he was leaving and we had
51 a couple of drinks and I got up to leave and just then Mr. Skinner enquired where—well yes, something was said about money. Crowley said he had some money that he received from his father for his trip. He displayed it. I cannot say how much he had. I cannot approximate the amount. It was none of my business and therefore I could not exactly say what was the amount.

In a conversation with Mr. A. A. Smith, the post-office inspector, in the city here, I did not say the amount; it was said there was about $200. I cannot remember who said that. Somebody at the table said that. He took some bills from his inside pocket and some gold from his hip-pocket. He took it from two pockets only that I saw. I cannot remember the dimensions of the gold pieces. I only saw some gold which was produced from the hip pocket and then returned to it. I stated he said his father sent it to him for his trip home.

Mr. Crowley was elated at his departure and he was celebrating a little.

It was in the evening about 6:40 or 6:45. I cannot tell how many gold pieces I saw. I saw a hand-full of them. I could not remember the dimensions of the bills. I am near-sighted and he was on the further side of the table and I could not see them well.

By the DIST. ATT'Y:

I never made the statement to Mr. Smith, the post-office inspector, on the occasion when I gave my statement, that the bills were in tens, fives and ones.

By the COURT:

I think I saw a one dollar bill, the one with which he paid for the drinks. I did not see any ten dollar bills, nor any fives.

Cross ex. by Mr. DEXTER:

The amount of money produced on that occasion by Mr. Crowley and the manner in which he displayed it did not excite in my mind any unusual comment. In my answer to the dist. att'y I meant that Crowley was overjoyed at the idea of going home and for that reason he treated his friends that he met. It was known in the community that he was going away, but not precisely on that day. He had told me some days previously that he had orders to go to Buffale. I am not aware that it was known in the community that day he had to take passage for the States.

C. H. KAHRMAN, called by the United States and sworn, testified

My name is C. H. Kahrman. I know Harold Crowley I saw him on Sunday, March 24th last, about six o'clock in the evening. It was in front of Mr. Rodriguez's store. I met him there and he invited me in to take a drink as he was going away that night. Mr. Lee and Mr. Chalk were in the party. I was in there about twenty minutes.

Crowley was in a rather happy frame of mind. He said: "Henry, I am going to God's country. I have got a good position and some money." He pulled it out of his pocket and counted it out on the table. I could not state exactly the amount but it was about $175—somewhere near that. The money was in bills and in gold. I can-

not state how much was in gold. I think there was some sixty or seventy dollars in gold. I am not quite sure. A few days
52 after this occurrence, in fact three days after, I made a written statement of what was done and said there to Mr. A. A. Smith, the postoffice inspector and that statement was correct.

Mr. CROWLEY: That is objected to—we are not bound by any statement this man may have made.

The DIST. ATT'Y: I am willing that the latter part of the last answer be stricken out.

My recollection of this occurrence at that time I made the statement was more distinct than it is now.

Question. Look at this and say if this is the statement you made then.

Mr. CROWLEY: I respectfully submit that this statement made three days after this occurrence and when the defendant is not present cannot be competent against this defendant.

The COURT: The statement is not evidence but the witness may be asked by way of refreshing his recollection, if he said so and so.

Mr. CROWLEY: That is beating the devil around the bush. You might as well take the answer from the statement.

The COURT: The court has ruled once on that question.

The district attorney hands witness the statement which he examines.

The COURT; That is, if the witness can state of his own recollection, after examining the statement.

Question. State what amount of money was in bills and what amount in gold?

Answer. About ninety to a hundred dollars in gold.

Question. And how much in bills.

Answer. As there was only about $185.00 in the total then the rest would be in bills.

The denominations of the bills were tens and a few fives and a whole lot of ones. He took this money I think from his hip pocket—not all of it. He seemed to have money in all pockets.

53 Cross ex. by Mr. DEXTER:

Independent of this statement which has been submitted to me for the purpose of refreshing my memory I do not remember clearly the amount of that money, or the denominations of it. I cannot say in whose writing the statement is or if Mr. Smith prepared it. I did not write it. Mr. Smith is the inspector of the postal department here on the island. I would like to explain. When I made the statement to Mr. Smith he took it down in pencil and as I was occupied in the playa I went to the playa to work and when I came home he presented this statement to me. I do not know who wrote t as it is in ink. I read it before I signed it. I am just as certain

of these things now as I was then. I did not pay much attention to the amount of money pulled out.

When I am invited to take a drink I am not in the habit of seeing how much money a man has in his pocket to pay for it.

In this occurrence I was not looking out for something. I did not watch to see how much he had. He called my attention and said: "Henry, look here" and that was all.

Like Mr. Lee I am a gentleman who does not concern himself about matters of that kind.

Question. And yet you come into court here a month or so afterwards and propose to tell the court and the jury the amount of money he had and the kind and character and denominations?

DIST. ATT'Y: I object to this line of questioning as it is manifestly unfair to the witness and seeks to cast an imputation.

Mr. DEXTER: I understand the witness states that there were a number of ten dollar bills and fives.

The COURT: I understand the witness said: "A few fives."

Question. So then you do not know how many five dollar bills or ten dollar bills, or how many five dollar gold pieces or ten dollar gold pieces he had.

Answer. No sir.

Question. You just know he had a considerable amount of money?

Answer. Yes.

Question. Is there anything unusual in that?

The COURT: That is an inference and is a matter for the jury.

54 Witness continues:

I knew Crowley had been ordered to Buffalo by the Post Office Department. I do not know if the community knew it but Crowley showed me a letter from the department making the transfer. I do not know if the community knew that he was to take passage for the States. I knew it.

By the COURT: Were there many of these one-dollar bills? How many were there?

Ans. There were more one dollar bills than any other kind.

Question. Can you give an idea how many there were?

Ans. No, I cannot.

Question. Were there ten, twenty or thirty?

Ans. I am quite sure there were more than twenty.

Question. Forty?

Ans. I did not pay any attention to his count. He was talking to Chalk.

Question. You can say though there were twenty or more?

Ans. Yes; twenty or more.

By Mr. DEXTER:

I did not pay any special attention to the shape of the dollar bills or how he withdrew them from his pocket. I cannot swear as to the number exactly.

By DIST. ATT'Y:

Mr. Chalk was sitting alongside of Crowley and he could have seen them better than I did. I was sitting on the opposite side of the table.

ALFRED A. SMITH, called by the United States and sworn, testified:

My name is Alfred A. Smith. My official position is United States post office inspector. As inspector I have been in the service since Feb. 25th of this year. Before that I was in the same class under director general of posts for Puerto Rico.

I know the defendant, Harold Crowley and have since fall of 1898. He has been employed in the postal service ever since I knew him. Part of the time as clerk and in part as acting postmaster at Coamo and also at Arecibo. He was so employed at the time he came to the island when I first knew him, at the Ponce post office at the Playa. That appointment was made by the director general of posts by virtue of the order of the Postmaster General.

55 I received notice that registered package No. 171 from Yauco to Ponce was missing first on March 25th last at 11 a. m. I received a telegram to that effect from the postmaster at Ponce. I replied to the postmaster at Ponce. I went to look to see if Mr. Crowley was in San Juan. I went to several places where I thought he would be likely to be and did not find him. I returned to the office of the postmaster of San Juan and while I was in there talking to some of the employés Mr. Crowley came in. We exchanged some words. I do not know what the conversation was about; it was of a general nature. I knew at that time that Mr. Crowley had come from Ponce to San Juan. I saw him in Mr. Landis' office. I had conversation with him on general topics. Nothing was said of postal matters except that he informed me that he had been transferred to Buffalo. I did not have any conversation with him in regard to this missing package at that time, but later in the day I did.

I received another telegram from the postmaster of Ponce and then I determined to go to Ponce to make the investigation there and I wished Mr. Crowley to go with me, so I went to where I thought he would be and found him and asked him to come out as I wished to talk with him. He came out and on the way over to my office I told him that I wanted to see him in relation to the missing registered package that seemed to have been lost in the Ponce office on the 24th. He said, yes, he knew something about it as he was there. And he said he had not spoken to me about it in Mr. Landis' office as I had said nothing to him about it and he had supposed the package had been found and that maybe it was not worth while to speak about it. We went into my office then and I asked him to relate to me what he knew about it. He said he left the Hotel Tropical where he was stopping, at eight o'clock and went over to the postoffice and found that the Yauco mail had just arrived. He said the mail had arrived just before he got there,

and Janitor Stephens had the pouch and was in the act of opening it, and that he did open it and dumped the mail on the table and that Stephens handed him the registered packages, picking them out of the mail and handing them to him with the two cards, and then Mr. Crowley went over to the box and opened it with his key and put the registers in the box and locked it. I asked him if he was sure the box was locked, and he said, Yes, it was, that it had a snap-lock and he was quite sure it was locked. I then asked him if he was near Stephens when Stephens opened the pouch. He said, Yes, that he was right alongside of him. I said, Do you think Stephens could have taken that without your seeing him? And he said, No, I do not think he could. I asked him how long he, Crowley, remained in the post-office at the time. He said: After locking the registers up in the box I left the office, leaving Stephens there alone. I asked him when he learned this register was missing, and he said he went to the office in the afternoon and was told by Clerk Salicrup that a register from Yauco was missing and that he then went immediately to find the register clerk and that he and the register clerk went together to see Mr. Miller. And that then Mr. Skinner, the register clerk, and Mr. Crowley went together to the railroad station to send a telegram to Yauco asking if the registered package had really been sent or if it had been left in Yauco by mistake. He said that he went around town with some friends of his in a carriage and went back
56 to the Hotel Tropical about six o'clock and then went from there to the café opposite the post office where he waited for the mail coach to come and that he left at 7 o'clock in the mail coach for San Juan, en route to Buffalo; that was the statement he made to me in my office. I told him then that I had determined on going to Ponce to investigate the matter and asked him if he would accompany me, and he said he would as he did not care to continue his journey until the matter was settled; that he being in the office that morning, he felt that he should wait until the matter was cleared up. I told him I thought that was very creditable in him. We arranged to go in the mail coach leaving that night for Ponce. That evening I was at dinner in the Colonial restaurant and as I finished and was passing out I noticed Mr. Crowley with Mr. and Mrs. Hutton at their table on the balcony, and I went and told him that I would be at the post-office about a quarter past eight. I went out. He met me a little before eight and we took the mail coach to come to Ponce. We arrived in Ponce at ten o'clock the next morning, the 26th—10 o'clock or 10.30. Mr. Crowley asked me on the way over if I had the numbers of the bills, and I told him no. I told him that I had telegraphed to the postmaster at Yauco to telegraph me the numbers of the bills that were missing and that I had received no answer and was very much afraid that the postmaster there had neglected to take the numbers of the bills when he remitted them or to keep a copy of the remittance letter. When we got to Ponce Mr. Crowley asked me if I needed him at the post office. I told him no. He said that he had been on the road two nights—

Sunday night going over and the next night going back—and that he was tired and sleepy and would like to go to bed, so we drove to the Hotel Francais and he got out and went in. I went to the post-office and examined the employés, each one separately, and examined the box that the registers were put in and found that intact. Then I determined to go to Yauco and did go to Yauco on the afternoon train. Well, first I went back to the French hotel for breakfast and I woke Mr. Crowley up and we had breakfast together. I told him I was going to Yauco and did go that afternoon. I examined the records of the Yauco office. Then on the next morning I cam- back to Ponce and went directly to the Hotel Francais and got there about 8.30. On the way up I met Dr. Haas and he and I together went to the hotel. Mr. Crowley was there and was taking his coffee. We sat down at the table. I told him I had been to Yauco and told him I had secured statements from all the employés in the postoffice and would like to have a statement from him as to the transactions of that day. He said, all right, he was perfectly willing to give it and to aid me in any way he could. Then he made his statement which I took down in long hand and afterwards when I got to San Juan I had it written out on the typewriter and he read it then and I asked him if it was a fair statement and he said yes, and then he signed it and swore to it in front of me.

(Witness shown a paper)

Yes; that is the statement I took in long hand and had it typewritten afterwards.

The COURT: Read it to the jury.

The DIST. ATT'Y: Read the statement to the jury.

This paper is admitted into evidence and is marked "Exhibit 'E'" and is in the words and figures following, to wit:

57 While in Aguadilla instructing Mr. Agust Font in the duties of postmaster he paid me about $45.

All of these sums of money were used by me for my personal expenses, When I left San Juan to come to Ponce I had about $90. with me. When I left Ponce to go to San Juan I had about $150. There was no particular occasion for me to draw on my salary on March 15th, but I thought it was the rule to pay twice a month. I have received no money from home or from any other sources, except one or two small items, as I borrowed from Mr. Lee Nixon $5. and Mr. Hugh Barclay $5.

(Signed) HAROLD CROWLEY.

Sworn to before me this day of our Lord, March 29th, 1901.

(Signed) ALFRED A. SMITH,
P. O. Inspector.

Direct examination of witness continued:

58 After taking that statement I told Mr. Crowley that I would return to San Juan by the steamer leaving that afternoon and

he said all right, he would go back with me. The rest of the day I put in making further investigations of the matter in the postoffice in Ponce and left Ponce about 4:30 p. m. I think it was, for the boat. Went down to the playa and made some further investigations and then went aboard the boat where I found Mr. Crowley. The steamer sailed about 8 p. m. When we were out to sea I was sitting on one side of the steamer and Mr. Crowley came to me and asked me what I thought of things. I told him I hardly knew and was just trying to study it out. He then said: "I have a favor to ask of you, Al." and I said: "I will be glad to do it if I can" He then said: "I want to ask you if this case goes badly for me and it looks as though you will have to place me in arrest, I want you to notify me in time so that I can cable to my father and to the Postmaster General and also secure an attorney" I said: "All right, if I find the evidence is such to warrant your arrest I will let you know in time so you can fix your affairs in good shape" He said: "If you will do that I will promise not to leave Porto Rico or San Juan until you say I can go" I said: "All right, the only thing I request is that you will report to my office once a day while you are here" When we got to San Juan, on the morning of the 28th at seven o'clock I think it was, I went over to the office and was busy that morning until ten o'clock, then I took up the case again and sent a clerk in the office for Mr. William A. Hutton.

Mr. Crowley was not present when Mr. Hutton visited me. Not then, but after Mr. Hutton came I sent for Mr. Crowley. Mr. Crowley came in and I told him that Mr. Hutton had refused to tell me anything about the case, stating that the relations he had with Mr. Crowley were purely personal. Mr. Crowley then said to me that Mr. Hutton was at liberty to tell me any relations or business transactions that he had had with him. I told him then that he could leave the room as I wanted to talk with Mr. Hutton. I later dismissed Mr. Hutton and sent for Mr. Crowley. He came in and I said to him "You stated to me in Ponce that Mr. Hutton had loaned you at various times between $200. and $215. *dollars?*" He said: "Yes, about $215." I said "Was any of that within the last five or six weeks?" He said: "Yes, $100." I asked him if he remembered the date and he said, No, not exactly, but before the day he left for Ponce when he was assigned there. Then he added: "I arrived in Ponce on Feb. 27th.; it must have been on Feb. 24th" I asked him what was the package he had left for Mr. Hutton the night he and I left for Ponce. He said: "A note and money" I asked him if Mr. Hutton had returned it to him and he said no. I asked him then if he would object to going to Mr. Hutton in my presence and asking him for that money, and he said he would go. I said: No, I think I had better not go. I will send for it" I said later: "You sit down at the desk and write a note to Mr. Hutton asking him to send that money you left with him by bearer He said Certainly, and he sat down at the desk and wrote the note and signed it. I handed it to my clerk, Mr. McLeod, and told him to go to Mr. W. K. Landis, postmaster of San Juan and ask him to go

with him as a witness to Mr. Hutton as to the receipt of the money from Mr. Hutton, also to witness the money that Mr. Hutton gave him was the identical money which he was bringing to me.

59 He went out and returned in about twenty minutes. Mr. Crowley remained there and Mr. McLeod returned with Mr. Landis. Mr. McLeod had a bundle of bills in his hands which he threw on my desk and I spread them out on the desk. I asked him to sit down to the typewriter and make a statement. Mr. Crowley was still in the room. I asked Mr. McLeod to make a statement of just what Mr. Hutton had said when he turned the money over to him and Mr. Landis. He did so and in the statement placed the numbers of the bills and their series and their values as I called them off to him. I was sitting at my desk, the typewriter was at my left. I took the bills one at a time and held them over to him that he might see them as I called them off as they were large numbers and I was afraid he might make a mistake, and so called them off and he wrote them on the typewriter. Both he and Mr. Landis individually compared the numbers of the bills with the numbers contained in the statement, and when it was found to be correct, they both signed it, and it was placed in an envelope and sealed in my presence. I handed the envelope to Mr. Landis and asked him to put it in his safe until called for. Then they left. I had in the meantime taken a note of the bills in pencil. I told Mr. Crowley he might go then. Then the clerk McLeod came in and handed me a copy of the remittance letter that had been sent from Yauco to my office in my absence.

The next day I had a consultation with the dist. att'y and in the evening I went to Mr. Crowley's hotel three times and could not find him and I went to several other places and could not find him. At last I mentioned to some one in the restaurant where I take my meals that I was very anxious to see Mr. Crowley and wanted to know if they knew where he was. They said they thought they would find him down to Mr. Hutton's house, that he had been there nearly all the afternoon. I went down to find him and met Mr. Hutton on the road and while I was talking to Mr. Hutton Mr. Crowley came along Fortaleza St. and then I told him, as I had agreed to tell him before the arrest was made, that he would certainly be arrested in the morning, and he thanked me for it and that was the last conversation I had with him until the morning of his arrest.

When Mr. Crowley was in my office I reduced to writing part of that examination. Mr. Crowley signed it.

Witness shown a typewritten paper.

Yes; that is the second statement of Crowley.

The COURT: Let it be admitted. Read it to the jury.

Dist. att'y read this statement te the jury.

It was admitted in evidence and marked "Exhibit 'F'" and was in words and figures following, to wit:

60 Whereupon upon cross-examination by Mr. Dexter, the witness testified as follows:

I landed in Porto Rico July 25, 1898. Then I returned to the States, arriving back December 2nd, 1898, and have been here ever since. Since that time I have been employed in the postal service. I have performed services on the island in Ponce, Cayey, and all over the island as inspector later. I was clerk in the Ponce office and then went to Guayama as postmaster; and from there
61 I went as acting*ing* inspector under General Elliott in the department of posts of Porto Rico and since December 25th I have been United States inspector. When I stated that when I was engaged in my office taking the numbers of the bills in my possession and which I had obtained from Mr. Hutton I was afraid there might have been some error; I wanted to be very careful. They were large numbers, in the millions, and I wanted to make no mistake. I have never had a case similar to this before, where I had to number the bills, and I wanted to be sure. I know of cases occurring at Ponce, Yauco or San Juan since I have been on the island, where postmasters claimed they had remitted certain amounts and it fell short and other times there was more money. Mistakes sometimes occurred in remitting postal fees. I have noticed cases where postmasters have neglected to describe a bill properly, that occurs quite frequently. My commission (showing it) gives me authority to give orders to Mr. Crowley in connection with this matter. Under my commission all postal employés are commanded to respect and obey me in the exercise of my duties and to receive orders from me. On the way from San Juan to Ponce on that overland trip, in the conversations I had with Mr. Crowley I did not undertake to advise him as to his course or conduct i- this matter. He showed every willingness to do as I desired him to do without any coercion on my part. From start to finish in this investigation so far as I have been connected with it, he has placed himself freely and at all times at my command, entirely so.

He has always been perfectly willing to assist and co-operate with me, at all times. I do not remember, while in the carriage of stating to Mr. Crowley that it would be better for him to do one thing or the other in this matter. He was so entirely willing to give me all the information that he possessed that I do not remember having to make such a statement. I did not take him with me to Yauco. He was tired out and it was not necessary. I was making the investigation and he was not. I did not think it at all necessary to take him to Yauco any more than I should take any other employé of the Ponce post-office.

I stated in my direct examination that when I came back from Yauco the next morning I called at the hotel and woke Mr. Crowley up. They gave me the number of his room down stairs and I went up alone. I rapped at the door and got no answer and I opened it and went into the room and called him a number of times. He was sound asleep. His clothing was lying on a chair—a part of it on one chair and part on another and I looked through it to see if

any of these bills were in his clothes. I looked through the man's clothing while he was lying asleep there and searched his clothes and I did not find any five or ten dollar bills. I did not think it was necessary for him to invite me.

When I was appointed as post office inspector I swore to support the Constitution.

Question. And did you not know that it is a part of the Constitution that everybody is safe from unreasonable search.

Ans. I did not consider this an unreasonable search.

62 Question. Going into a man's room while he is in bed and sleeping and going through and searching his clothes: Do you know what that is called in the States?

DIST. ATT'Y: I will have to object to the form these questions are taking. I think it is hardly permissible.

The COURT: I will let him show what he did.

Question. And you made a careful search and found no five or ten dollar bills and no gold?

Ans. I think there was one ten dollar gold piece. That was all. I called him a number of times but could not wake him up.

ISAAC GOLDSMITH, called by the United States and sworn, testifies: My name is Isaac Goldsmith. I know the defendant Harold Crowley. I saw him in March last, about 25th or 26th but don't remember exact date. The only transaction I had with him at that time was this, that he left an envelope with me to deliver to Mr. Hutton. It was not addressed, it was blank. I delivered it to Mr. Hutton. I think it was the following day, the first time I saw him.

Cross ex. by Mr. DEXTER:

I do not remember the time of day it was when Mr. Crowley came into my place of business. I was engaged at the time in the transaction of my business and did not attach much importance to it. When he handed me the envelope he asked me to give it to Mr. Hutton and I put it in the cash drawer and the drawer was not locked. It is only locked at night. I cannot say that it was left during the day or night. The other people, the other employés of my establishment had access during that day to the cash drawer and every other day. From the time I put that envelope into the cash drawer I gave it no further attention until the next day when Mr. Hutton called when I took the envelope out. From my own knowledge I am not able to state whether the envelope I gave Mr. Hutton on the next day was the same identical envelope Mr. Crowley left, for this reason; that the boy who works behind the bar goes to the cash drawer the same as I do myself and I cannot state positively.

Re-direct:

I do not remember that there was any other envelope in the cash-drawer when I put this one in there and I do not remember that

there was any other envelope there when I took out the one I gave to Mr. Hutton. I had no trouble in selecting the right envelope to give to Mr. Hutton. Missed nothing else from the cash drawer while the envelope was in there.

63 That envelope that I gave to Mr. Hutton was, so far as I know, the same envelope that Mr. Crowley had given me, *bu* but I cannot exactly say whether it was the same or not. I think it was the same one. It was supposed to be the same one. I could not swear positively that it was the same one. At the time I gave the envelope to Mr. Hutton given me by Mr. Crowley I supposed it was the same one given me by Mr. Crowley but I could not swear that it was. I had no other envelopes for Mr. Hutton.

Re-cross by Mr. DEXTER:

My place of business is a café; a saloon and it is patronized by a lot of people, and I have been in the habit of receiving messages and packages to deliver to people from time to time.

W. A. HUTTON, called by the United States and sworn, testified: My name is W. A. Hutton. I live in San Juan. I know Harold Crowley. On or about March 26th last I received from the hands of Isaac Goldsmith an envelope that came from Mr. Crowley, so Mr. Goldst*ein* told me.

The COURT: Never mind what you were told. Let that be stricken out, that answer. Go ahead.

I received an envelope from Mr. Goldsmith. It was unaddressed. It contained money to the amount of $70.00 as I remember it. I only remember there were two ten dollar gold pieces and the balance was in bills but I do not remember the denominations of the bills. There were, however, some five and ten dollar bills. I cannot say how long I kept the money in my possession, a few days. Part of it I spent and part of it I turned over to Mr. McLeod and Mr. Landis.

Question. How did you happen to turn that money over to those gentlemen?

Mr. CROWLEY: The question is objected to because it is not put in shape to make it competent evidence.

The COURT: I will let him state what he did with it.

Mr. CROWLEY: Anything he did with it unless in the presence of the defendant?

The COURT: I have said that I will let him state it.

The defendant excepted.

Mr. Landis and Mr. McLeod met me and handed me a note fr-m Mr. Crowley asking me to turn over that money. I had often seen his handwriting. I turned it over in response to the request in that note. I turned over to them fifty dollars in fives and ten dollar bills. No gold. I could not say positively whether or not the fifty

dollars was part of the seventy dollars which I received in the envelope delivered to me by Mr. Goldsmith. I rather think so but I cannot say positively.

64 Question. Why not?

Answer. From the fact that I might possibly have received other money and may have paid out that money I received in the envelope.

Question. Did you not at the time you turned over that money to Mr. Landis and Mr. McLeod state to them, positively, that that was fifty dollars of the seventy dollars you had received in that envelope?

Mr. CROWLEY: I object to this question unless the defendant was present.

The COURT: I think he can refresh his recollection if it was so and so.

Mr. CROWLEY: But if the defendant was not present it is incompetent and improper.

The COURT: You had better confine that to the witness' best knowledge.

Question. As a matter of fact are you not on very friendly and even intimate terms with the defendant, Harold Crowley?

Mr. DEXTER: I object to the manner of the dist. att'y. This appears to be a cross-examination. He is his witness.

The COURT: I will let him prove that.

DIST. ATT'Y: I want to ask this question because the witness, to a certain extent, is an unwilling witness.

The COURT: I have not seen sufficient evidence that the witness was unwilling.

By the COURT: From your knowledge of the transaction was that the same money?

Ans. I do not know from the fact, as I say, I may have received other money in the interim from the time it was turned over to me by Mr. Goldsmith and the time I delivered the money to Mr. Landis.

Question. From the way you keep your money, from your best knowledge, is that the same money or a part of it?

Ans. I think, possibly, that it is a part of it.

Question. What is your best opinion about it?

Mr. CROWLEY: I object to the question of the court as to the best opinion of the witness and to the answer of the witness as to that opinion.

The COURT: I say the word "opinion" in the sense of "knowledge," Mr. Hutton. Now answer the question.

Question. From your knowledge of the circumstances and the way you keep your money and what you receive according to your best knowledge is that the same money or a part of it?

Mr. CROWLEY: I object to the question because it calls for evidence

that is incompetent, improper and for a conclusion and not for a statement of fact.

The COURT: The witness will answer the question.

65 Mr. CROWLEY: Please note an exception.

Witness, answering: I think possibly, a part of it perhaps.

The COURT: What was your answer? Did you say you think so?

Ans. Yes, that was my answer.

The COURT: Proceed, Mr. District Attorney.

The DIST. ATT'Y:

Question. I desire to repeat my former question, your honor, on the ground that the unwillingness of the witness has been sufficiently shown.

The COURT: What was the question. Read the question.

The stenographer read the following question:

Q. Did you not, at the time you turned that money over to Mr. Landis and Mr. McLeod, state to them positively that that was fifty dollars of the seventy dollars you had received in that envelope?"

Mr. CROWLEY: I desire to object to this question as it is incompetent and improper unless the defendant was present when such a statement was made.

The COURT: Let the witness answer the question.

Mr. CROWLEY: I desire that the record show an exception taken by us to the ruling of the court.

The COURT: Make an exception. Answer the question.

Witness answering:

I told them that I thought it was. I think that was the extent to which I went in the positiveness of my statement.

Question. Didn't they ask you directly "Is this a part of the identical money that you received in the envelope from Mr. Goldsmith" and didn't you answer them, without any expression of doubt whatever, it was?

Mr. CROWLEY: I object to the question as incompetent and immaterial and for the same reason and grounds as stated in the objection to the other question and answer.

The COURT: Answer the question.

Witness answering:

I told them I thought it was.

Question. Didn't you tell them what I have asked you?

Ans. I did not understand your question.

Question. There is a difference, Mr. Hutton, between saying yes "Think it was the money" and "It was the money" I will repeat the question: Did they not ask you directly whether or not it was the identical money and did you not reply to them that it was the money, without any shadow of doubt about it?

Mr. CROWLEY: I object to this question as incompetent, improper and immaterial.

The COURT: Answer the question Mr. Hutton.

66 Mr. CROWLEY: Please note an exception.

Witness, answering:
As I answered before, I said I thought it was the money. That is my recollection. That is all that I can say.

Cross ex. by Mr. DEXTER:

Between the time I got this envelope containing money from Mr. Goldstein and these gentlemen came to me asking for some money for Mr. Crowley, possibly I had received and placed in my pocket where I usually carried money, other sums of money. I cannot say. I carried money in my pockets usually, in my trousers pocket—not bill-, but small change in my small coat pocket. My habit in carrying bills was to carry them loose in my trousers pocket. I had been engaged in my business of contracting about that time and had received money from time to time. When the question was asked me by the dist. att'y a minute ago about this money which I returned upon that occasion, my impression at the time the question was asked me by these gentlemen referred to, was that they wanted the balance of the money that I had and they came there to get the amount of money left over, not spent by me, or all of it that I had.

So far as my present knowledge is concerned I cannot swear positively, here under oath, whether or not the bills returned were the identical bills which were received in the package. I am not positive. It may have been and may not have been. I do not remember the date Mr. Goldsmith handed me the envelope. I do not remember how many days after he handed me the envelope containing the money, before these gentlemen came from Mr. Crowley and asked for the money. It was a few days. I had loaned money to Mr. Crowley before that time. I have loaned him more than sixty-five or seventy dollars.

Re-direct:

During the week previous to the time I gave this money to Mr. Landis and Mr. McLeod whether I had been away from town or been in town I do not remember. I was over to Culebra. I went over there on the little Government boat, the "Borinquen" on the day the American fleet reached Culebra, whatever day that was. We left one night and returned the next night. Prior to that time I had been in San Juan quite a little while. During the time I was in possession of that sixty or seventy dollars I cannot remember very well whether I received any other money from anybody else. I would like to explain that I am in partnership with a gentleman named Swiggett who runs a tailor shop. We dissolved partnership with the understanding that as often as he made collections he was

to turn them over to me and as often as he made collections on his open accounts he turned the money over to me and for that reason I cannot remember whether I received any money from him during this time or not. Do not remember receiving money from any one else during that time. There were other people that owed me money.

I had that money more than twenty four hours. I think I had it more than forty-eight hours. The last money I loaned Mr. Crowley was the day of the night he and Mr. Smith came from Ponce. That was a hundred dollars.

67 W. K. LANDIS, called by the United States and sworn, tes tified:

My name is W. K. Landis. I am postmaster in San Juan. I know Harold Crowley. I saw him in the office of Post Office Inspector Smith on March 28th last. I do not know whether I had seen Mr. Crowley before that time or not but before I saw him in the office in the afternoon I had been with Mr. McLeod to see Mr. Hutton. I did not go up there until I came back.

(Witness temporar-y withdrawn)

JOHN D. MCLEOD, called by the United States and sworn, testified:

My name is John D. McLeod. I am clerk in the office of the post office inspector, San Juan. The chief inspector is Mr. Lawrence Letherman. The field inspector is Mr. A. A. Smith. I know Harold Crowley, the defendant. On March 28th last I was in the office at the same time that Crowley was. I was requested by Mr. Crowley to take a note to Mr. Hutton and to get some money that he asked for in the note. Mr. Crowley wrote the note. I could not say that I read it. I think I read part of it when he handed it to me. I did read the note. After the note had been written by instruction from Mr. Smith I asked Mr. Landis to accompany me and I proceeded to find Mr. Hutton. We went to different places and at last found him in a saloon on San Francisco street. I called him out and presented the note and asked him to read it. He read the note and as he did not seem to understand at first what was required I took the note from his hand and read it and I said to him "Mr. Crowley requests that money he left with you and wants you to give it to me and Mr. Landis" He said: "It is not here" I said: "Can you get it" He said "I do not think I could" I said: "Are you sure" He said: "I might in half an hour."

Mr. DEXTER: I object to this statement as it cannot be competent. It is simply hearsay remarks made by Mr. Hutton. I object to it on the ground of its incompetency.

The COURT: This witness was the agent of the defendant sent by him to get certain things.

Mr. DEXTER: I believe that rule applies where the agent is for

the purpose of obtaining information, but in this case he was sent to get a certain sum of money, and not to enter into any discussion with the party to whom he was sent.

The COURT: I think he was his agent as to that transaction. He was directed to carry out certain instructions. I will let you prove what he said.

Mr. DEXTER: Note an exception.

Witness, answering:

He said he could get it in probably a half an hour and would take it to the office. I told him that if it was just as convenient I would accompany him and he would get it there in my presence and we then walked across the plaza to the Colonial Club res-
68 taurant and just as we—and just as we went in he said to Mr. Goldsmith——

The COURT: Who said that?

Ans. Mr. Hutton said to Mr. Goldsmith "Give me this money" and to me "Do you want to go in and see Mr. Goldsmith?" I said: "I am not interested in Mr. Goldsmith. If you have the money I want it to take to Mr. Crowley." Just at that moment Mr. Goldst*ein* stepped out of the door and I do not know whether it was my suggestion or Mr. Hutton's but we stepped in and Mr. Hutton motioned to a table and we all three sat down and as we sat down I said "Well, are you going to get the money?" and he said: "I have it in my pocket" I said: "How much?" and he said: "About fifty dollars" I said: "Is this the identical money left with you by Mr. Crowley?" and he said that it was. I looked at Mr. Landis to see if he understood the question and its import and then I asked Mr. Hutton for the money and he reached in his pocket and got out a roll of bills and put them on the table and I counted out fifty dollars. I said "Is this the original money left by Mr. Crowley with Mr. Goldsmith for you and have you any more?" and he said: "Yes, I have about four dollars more that I got in change over the bar in buying drinks" I said: "I do not want that money but I want the original money" I told him I would give him a receipt for it and I took out a piece of paper and wrote a lead pencil receipt. We then proceeded to the office of the post office inspector. I carried the money in my left hand partly shut, just that way (demonstrating)

The denominations of the bills were two ten dollar bills, one five dollar bill and two ten-dollar gold pieces that I know of, as to the rest I cannot say. When I went back to the office I laid the money on the table in front of Mr. Smith. It was finally deposited with the postmaster of San Juan. A record was taken of the denominations of the bills, they were then placed in an envelope which was sealed with sealing wax and handed to the postmaster. The last I saw of it was the sealed envelope in the hands of the postmaster.

Cross ex. by Mr. DEXTER:

The circumstances under which Mr. Crowley authorized or instructed me to go for this money were: Mr. Smith asked him if he did not leave some money with Mr. Goldsmith and he replied that he did, and Mr. Smith asked him if he would mind sending for that money, or going with him to get it and he replied that he would not and then Mr. Smith said that "Better still I will send Mr. McLeod for it, with your permission, if you will write the note" Mr. Crowley sat down to the desk, took my pen and wrote the note. It was not in an envelope folded. I cannot say if Mr. Crowley folded it. No address was on it, except just "Mr. Hutton" I did not open it after it was delivered to me. I would not swear that I knew what the note said, and I would not swear that I did not read it when he gave it to me. I would not undertake to swear to the contents of that note, the exact words. No sir. It requested the money he left with him. I did not say, positively, that I did not read the note. I am positive of the contents. Literally I cannot repeat what the note said. The sense of it I can. It asked Mr. Hutton to kindly deliver to the bearer the money I left with Mr. Goldsmith for you the night before I left for Ponce.

69 If I read it at all I read it when Mr. Crowley was writing it, as I was standing alongside of him, and when he wrote it he worded it aloud and I think he read to Mr. Smith also. I kept the numbers of the bills—on my machine. I did not do that without having made any errors at all. I did make an error or two, I think one error, in copying a number. I have been engaged in the profession of stenography three or four years. That was the second time I ever took the denominations of bills on the typewriter. Once before I took the denominations of some one-dollar bills. I made one error in undertaking to transcribe the numbers of these bills. I would not swear not more than one. That was not with reference to the numbers of the bills. There were two as I recollect now. One was with reference to the little character that comes before the number on the bill. I copied it in but forgot to make a space as a stenographer will once in a while, and I had to rub it out and replace it. The other error was in the series, the date of issue or something about the series. In looking it over and reading it after first writing it I saw the mistake.

W. K. LANDIS, recalled by the United States.

I am postmaster of San Juan. On March 28th last I went with Mr. McLeod to see Mr. William Hutton. We found him at the "Fashion Bar." Mr. Hutton came out on the sidewalk and Mr. McLeod presented him a note signed by Mr. Crowley asking him to deliver to Mr. McLeod any of the money that had been left with Mr. Hutton by Mr. Goldsmith. Mr. Hutton said that he could get the money in half an hour and we told him we would go with him to get the money. We went to the Colonial Restaurant bar-room and sat down at a table and Mr. Hutton took from his trousers

pocket two ten dollar gold pieces, two five dollar bills and two ten dollar bills which he gave to Mr. McLeod, stating that that was the money he had received. Mr. McLeod took the money. The money was handed directly over. The bills were crumpled up. He took them out of his pocket and spread them on the table. He had, as I remember, a few one dollar bills which he said was not a part of the money which he had received from Mr. Crowley. Mr. McLeod took the money over to the office of the inspector in charge and there a description of the money was made. Mr. McLeod carried the money in his hand. I did not keep my eyes on his hand all the time but I knew that the same money was laid on Mr. Smith's table that he received from Mr. Hutton. This same money was afterwards sealed in an envelope and placed in my custody and placed by me in the safe in the San Juan post office, and remained in there until I came here, when I brought it with me? It has been in my custody ever since. I have it now.

Witness produces package.

This is the identical package that was sealed up and that remained in my custody from that time until now?

The witness opens the package.

DIST. ATT'Y: I will introduce into evidence first the package entire and then the contents.

The envelope is marked "Exhibit 'G.'"

70 MR. CROWLEY: The bills and the gold pieces contained in this package are objected to on the ground that they are incompetent and improper evidence in this case.

THE COURT: Do the numbers of the bills, or the series, correspond in any way to the Yauco certificate?

THE DIST. ATT'Y: Yes, sir, both series and numbers.

THE COURT: Then I think they are competent.

MR. CROWLEY: Will your honor give me an exception?

THE COURT: Certainly, note an exception.

Said envelope and contents were thereupon received in evidence, the contents consisting of the following described articles: two United States ten-dollar gold pieces; one United States Treasury note of the denomination of ten dollars of the series of 1880 and numbered A24281565; one ten dollar note issued by the First National Bank of Saratoga Springs, New York, of the series of 1882 and numbered U182607ε; one United States silver certificate of the denomination of five dollars, series of 1896, and numbered 25535872; and one five dollar note issued by the Athol National Bank of Athol, Massachusetts, series of 1882, and numbered T817083ε.

Witness cross-examined by Mr. DEXTER:

Mr. McLeod is not employed under me. He is in the office of the inspector in charge, Mr. Letherman. He is in a different department of the service from me. Mr. McLeod was spokesman on the

occasion when we went to see Mr. Hutton and I permitted him to conduct whatever examination there was of Mr. Hutton. I was not present when that note was delivered by Mr. Crowley to Mr. McLeod. The first time I knew that Mr. Crowley had given Mr. McLeod this note, my recollection is that Mr. McLeod showed me the note when he came into the post office to ask me to go with him to see Mr. Hutton. He opened it, or unfolded it, and read it to me. It was written by hand. I do not know who wrote it. I would not now at this time undertake to give the precise language of it, word for word, and I do not feel at this time that I could repeat it.

Government here rests its case.

Mr. CROWLEY: May it please the court, I ask the court now, at the close of the Government's case, to direct a verdict of "not guilty" upon the following grounds:

First. That the indictment, in each and every one of its three counts is defective, upon the ground that it does not allege, in any one of the three counts, that a letter or package or contents of a letter or package were placed in a post office of the United States at any place or at any time.

Second. In no one of the counts is it alleged that this property, this letter or package or contents of letter or package, came into the mails of the United States at any particular place or at any particular time.

Third. The indictment does not, by name, specify the postmaster to whom the letter or package was addressed, It simply alleges that it was intended to be conveyed by mail to the postmaster at San Juan.

Fourth. There is no evidence of the existence of the national banks or that any of the bank-notes were issued by any national bank.

71 Fifth. There is no evidence in the case that this letter or package was not delivered to the postmaster at San Juan, as charged in the indictment.

Sixth. There is a variance between the indictment and the proof. The indictment alleges that the letter or package was directed to the postmaster at San Juan. The proof is that all the packages were put in a large envelope which was directed to the postmaster at Ponce.

Seventh. The court is without jurisdiction, there being no law for this term, commencing May 13, 1901.

And after hearing counsel for defendant in support of said motion and the attorney of the United States in opposition, the latter calling the attention of the court to the record of this court in this cause at its April term, 1901, at the city of San Juan, to wit: on the 15th day of said April, which is in words and figures following, to wit:

"This cause at the request of the defendant, and the district attorney not objecting, is transferred to the next term of this court at Ponce, to be called on the third day of the term, and in the event

that the defendant does not give bail, then the marshal of this court will, at the proper time, take and transport him there for trial."

and also to rule one of this district court, adopted and promulgated on the 15th day of September, 1900, which is in words and figures following, to wit:

"Terms will be held at San Juan on the second Monday of April and October; at Ponce second Monday in January and May; and at Mayaguez first Monday in June and December. Special terms will be held by order if needed."

the court denies said motion; to which ruling defendant by his counsel excepts.

The DISTRICT ATTORNEY: I shall now ask, your honor, that the Government be permitted to re-open the case and to show whether or not that letter was ever delivered.

Mr. DEXTER: It is too late now, your honor.

The COURT: Well, call in the jury. I have heard enough about this. I will permit you to introduce Mr. Landis on the one point you requested.

Mr. DEXTER: Please give us an exception.

The jury was called in; the Government re-opens its case. W. K. LANDIS recalled as witness.

Question by DIST. ATT'Y. Did you ever receive as postmaster at San Juan a registered package issued from the Yauco post office on March 23rd last and numbered R. P. E. No. 171?

Ans. That is a question I could not answer.

Mr. CROWLEY: Whether the question can or cannot be answered, we desire to interpose the objection that, there being no allegation in the indictment to that effect, it is incompetent, immaterial and inadmissable.

72 The COURT: I will permit it to be asked.

Mr. CROWLEY: Please note an exception.

Question. Can you answer the question?

Answer. I do not know.

Question. When did the knowledge of the supposed loss of that package first come to your knowledge?

Mr. DEXTER: Objected to because it is immaterial.

The COURT: I will let him be examined about that.

Mr. DEXTER: Please note an exception.

Question. When did you first know of the loss of this package?

Answer. It came to my knowledge either the day or the day after the occurrence.

Question. Would you not have knowledge of the receipt of a registered package addressed to you or rather of money order funds coming to you as postmaster?

Answer. Not necessarily. These are signed for by the money

order clerk who receives them and with the assistant money order clerk counts the money, the contents of the register.

Question. You have not, since the time, examined the records of your office to see whether such receipt or such package is shown?

Answer. I have not.

DISTRICT ATTORNEY: The Government closes its case here.

The counsel for the defendant, Harold Crowley, to maintain the said issues on his part, therefore called JAMES BRENNAN, who being sworn as a witness and examined by the defendant's counsel, testified:

My name is James Brennan. I was employed as operator in the Signal Corps in Yauco, Puerto Rico. I was there from August 1898 until February 1901. My employment as telegraph operator at Yauco ended at the end of November 1900. My office was right next door to the post-office, in the same building. I had communication by two doors with the post-office. There was only a division by a partition between. These offices were maintained one by the U. S. Signal Corps and the other by the Post Office Department. I became acquainted with Mr. Delgado while he was postmaster there. He had no assistant for some time but later his elder brother was his assistant. He is a married man of about thirty-five or forty. In the month of March of this year or shortly prior to that time I do not remember whom he employed there as assistant. I left there in February of this year. I cannot state that Mr. Delgado handled the mail matter in any other way than in the proper way. He used to leave the office about four or five o'clock in the afternoon. He came to the office about six a. m. in the morning. I was called in by him several times to look up some mistakes and help him out.

73 Question. Whom did he tell you had made those mistakes?

THE COURT: That is not competent.

Question. What was the character of this work that you were called in to help him with?

THE COURT: That is not competent unless it relates to this particular transaction.

WITNESS: I was not in the post-office on March 23rd or 24th.

The defendant then called MANUEL RAMON MORALES, who being sworn, testified:

My name is Manuel Ramon Morales. I am a resident of Puerto Rico. I am clerk in the firm of Morales and Co. I know defendant Mr. Crowley and recall having seen him one Sunday in March last. I saw him March 24th last in the house of Avelino Gonzalez, in the playa. House is a café. Was about ten o'clock in the morning. I think he was having some refreshment. I think some one else was with him. I spoke to him and he spoke to me. I was there for a

few minutes. I went back to the office. Didn't notice when Mr. Crowley left the café that he passed my house. When I left the café Mr. Crowley was still sitting there.

Cross ex. by DIST. ATT'Y:

The time of day was about ten o'clock. I could not say positively that it was more than 9 o'clock. It was about 10 o'clock, more or less, I would not be positive.

The defendant called EMILIO MORALES as a witness, who being sworn testified (interpreted)

My name is Emiolio Morales. Am clerk in the house of Morales y Cia. That house is in the playa. I do not remember the time of seeing this gentleman, Mr. Crowley, one Sunday in March. I was there in the house when the thing, the sending of a trunk to San Juan, occurred but I did not see the young man. I do not know the passenger nor the trunk. I had been in the office all the morning.

Cross ex. by DIST. ATT'Y:

I don't remember what hour the trunk arrived. I had gone to the office that Sunday at 7 o'clock. I have no idea of the time, how long I had been there when the trunk came.

The defendant called JUAN JOSE RINTER as a witness, who being sworn, testified (interpreted)

74 My name is Juan Jose Rinter. I am an employé of the post-office in the playa here in Ponce and was on March 24th last. I recall seeing Mr. Crowley in the playa on March 24th last. He was there in the establishment of Avelino Gonzalez. I do not remember the exact time. I can say that it was before ten o'clock in the morning. Cannot say with certainty how many minutes before ten o'clock it was. I went to salute him. I did not see Manuel Ramon Morales there at that time. When I spoke to Mr. Crowley he was talking to two gentlemen. I left him sitting at the table talking to the two gentlemen. When I was there they were doing nothing but talking. I did not see them after they left nor see them when they arrived at the playa.

The defendant called PAUL VALDIVIESO, who being sworn, testified (interpreted)

My name is Paul Valdievieso. I know Mr. Crowley. I saw him one Sunday in March last, about March 24th, pretty near after ten o'clock, about nine-thirty or ten o'clock. He came in there with two friends and took a drink and he paid me forty cents, giving me fifty cents and I gave him back ten cents. That was about 9.30 or 10 o'clock. He was in the house there with two friends and they took a drink and went out. I did not see where they went to.

Cross ex. by DIST. ATT'Y:

They were there about fifteen minutes or so. I was not looking at the clock so as to particularly notice the time. They came in to get a drink, got it and went away.

The defendant called AVELINO GONZALEZ y RODRIGUEZ as a witness, who being sworn testified (interpreted)

My name is Avelino Gonzalez y Rodriguez. I reside in the playa. Have lived in Puerto Rico 38 years I am a merchant. My business is a café or canteen. I know Mr. Crowley by sight. I recollect seeing him on Sunday in March last in my establishment. I can not say the hour but it was before breakfast, about 9:30 or 10 o'clock.

Cross ex. by DIST. ATT'Y:

It was not so late as noon. I fixed the time as between nine-thirty and ten o'clock because having been before breakfast I supposed it was about ten o'clock. If it had been eight o'clock it would have been before breakfast but I was accustomed to go there at 8 o'clock. I was there at 9 o'clock. I cannot fix the hour Mr. Crowley came. I know it was before breakfast.

The defendant called W. P. CHALK as a witness, who being sworn, testified:

My residence is San Juan. I have been in Puerto Rico about a year and a half, in the engineers' department, under Capt. Flagler, under Capt. Judson before.

75 Under the United States Government. I know the defendant, Crowley. I saw him on March 24th last in the city of Ponce. First saw him between 12:30 and 1:30 on Marina street. Mr. Skinner, the post-office clerk and a witness here, and I were together Sunday morning, about nine o'clock. I met Skinner in the American drug store just below the postoffice on Marina street and we walked up to the postoffice to see if Mr. Crowley was there. We went around to the side door. Didn't find Mr. Crowley. The office was closed. Remained there about five minutes on the outside. We returned to the post-office at ten o'clock, I think, just before ten. In the meantime we were in the American drug store on Marina street. I did not see Mr. Crowley in that vicinity at any time between nine and ten o'clock. I was looking for him. I had heard he had gone to Martina and I was looking for him to come back. I kept a lookout for him. He did not pass on the road coming from the playa at that hour.

At ten o'clock there was a man standing at the post-office there with the mail, the man from Adjuntas. I did not see Mr. Crowley around there at all that time. I didn't see Mr. Crowley at all that morning. After I left the post-office at ten o'clock and when I found the mail carrier from Adjuntas there, I think I went back to the drug store. I was still looking for Mr. Crowley. I did not meet him until the afternoon I am the Mr. Chalk referred to here

by some of the witnesses as having been present at a meeting between Mr. Crowley and two gentlemen named Lee and Kahrman. That was in Rodriguez's café. The defendant then had some bills I am not able to state what kind of bills they were. I was not noticing him at that time. I was talking with Mr. Lee at the time. I suppose I was three feet away from Mr. Crowley. If he had produced money at that time and spread it on the table I would have seen it and detected the different denominations. He had some one-dollar bills. He paid for the refreshments we had there with a one dollar bill. I was with Mr. Crowley that afternoon from 1:30 until he left on the mail coach. He did not visit the post office at any-time during the afternoon. Before this meeting on Sunday I had seen Mr. Crowley last the Saturday night before. I spent some time with him. On that Saturday night there was some gold changed but I do not know how much it was. I knew that Saturday of his contemplated visit to the States. He first told me of going to the States that Saturday night. He said then he had received some money from his father.

Cross ex. by DIST. ATT'Y:

I first went with Mr. Skinner to the post-office about nine o'clock. Then I went back to the drug store. Still with Skinner. He walked with me to the drug store. He didn't stay with me until I went back the second time. We separated. Didn't find Crowley there the second time. The office was not shut. I think Mr. Salicrup was in the office at the time. I asked him if he had seen Mr. Crowley and he said he had not seen him. I do not think it could have been nearer 11 than 10 o'clock. I think it was near ten o'clock because I went back to the hotel after that trip. I finally joined Mr. Crowley on Marina street.

To the Court: I do not recollect how many one dollar bills I saw on Crowley.

76 The defendant called CHARLES MCFARLAND, who being sworn testified:

My name is Charles McFarland. My residence is Ponce. Lived here about ten years. At the present time I am official interpreter for the quartermaster's department in Ponce. I know the defendant, Mr. Crowley. I saw him in the café of the Casino Sunday, March 24th last. The Casino is on Mayor street, next to the theatre. It is about four or five blocks from here. Saw him there about ten o'clock in the morning. I was there until he left about half past ten.

The defendant called GILLERMO WHITE as a witness, who being sworn testified:

My name is Guillermo White. I live in Ponce and have for nine years. I am a waiter at the café of the Casino. March last I was employed at the West Indies Express Company. March 24th last—Sunday—I was employed in the Casino. I know Mr. Crowley. I

saw him March 24th last in the Casino. It was a little after ten o'clock. He was with Mr. McFarland and Mr. Salicrup, they being the only two I can remember with him. They were sitting around a table taking refreshments.

Cross ex. by DIST. ATT'Y:

My attention was not particularly called to the time of the day. I never took notice. He was there about half an hour from a little after ten o'clock. I never noticed the clock. I just made a guess at it. It was a little before breakfast. It was not half past nine instead of ten. It was after ten.

To the Court: I only guessed it was that time but I am quite sure of it. As a matter of fact I cannot be positive as to what particular time it was, only it was somewhere between nine and eleven o'clock.

Re-direct:

It was before breakfast time.

WILLIAM HOUGHTALING called by the defendant and sworn, testified:

My name is William Houghtaling. I live in San Juan. I have been in Puerto Rico two years the 2nd of May last. At present I am clerk in the auditor's office and my occupation has been the same since I have been on the island. My office is located in San Juan. Have been in the auditor's office ever since I arrived in San Juan. I know the defendant, Mr. Crowley, very well. Have known him since July 1899. Became acquainted with him in San Juan. He was then postmaster at Coamo. He was postmaster there from May 20th to November 13th of that year, 1899. I audited his accounts while he was postmaster in Coamo.

Question. State to the jury in round numbers how much money passed through his hands and which he accounted to your office for, during that time.

77 DIST. ATT'Y: I do not see how that is material.

The COURT: How is that competent.

Mr. CROWLEY: I understand that the witness had the auditing of all the accounts of the postmasters on the island up to April 30th last when the insular government was established, and that during that time all the postmasters' accounts passed through his hands; and we propose to show by this witness that the defendant was postmaster at Coamo during the time he mentions and that he handled during that time——

DIST. ATT'Y: I object to a statement of what he proposes to prove.

The COURT: I will hear the statement.

Mr. CROWLEY: That he handled nearly sixty thousand dollars without the discrepancy of a dollar, and that his reports were made regularly upon the very day required and embracing every cent of the money handled; and that subsequently he was acting postmaster at Arecibo for a certain time and that he handled money there—

thousands of dollars—without a discrepancy, and that his reports were made on time; and that as clerk in other offices on the island, two years and seven months his accounts have been rendered promptly and regularly, and that in the neighborhood of two hundred thousand dollars have passed through his hands without the discrepancy of one dollar or cent; and after that I want to show by this witness that he knows his general reputation since he has been on the island and that it is good.

The COURT: I will permit you to show what he has been engaged in, but the detail of the amount of money is not competent.

As postmaster of Coamo he rendered accounts of money in his money order statements he had to render accounts weekly. These accounts were rendered regularly. He was acting postmaster at Arecibo also since I have known him. He was there from the 6th of December to April 30th so far as I know. My work ceased on April 30th, 1900. He had to make reports to my office of his funds—exactly—some every week and some monthly. His accounts were rendered regularly at the times required.

The COURT: I exclude that.

I know that after April 30th 1900 he continued as postmaster at Arecibo His accounts were not rendered to me after that time. The orders were they were to be sent direct to Washington. All the postmasters' accounts. Have known the defendant since July 1899. I have been associated with him in such a way as to know his reputation quite intimately. His general reputation for integrity from the speech of people on the island is good.

Defendant called R. A. MILLER as a witness--being sworn he testified:

78 I have known the defendant since January 8th, 1899. I know his reputation, general reputation, for honesty and integrity, in Ponce, from the speech of people around this place it is good so far as I know.

Defendant sworn in his own behalf:

My name is Harold Crowley. I have been in Puerto Rico since September 22nd 1898. I landed in Ponce. Since I arrived on the island my occupation has been postal clerk and acting postmaster at Ponce for 11 months, 5 months at Coamo, a year at Arecibo and thirty days here.

That is my first Government work.

I never saw the package in question and did not take it. The evidence of the witness Gonzalez as to having gone to the postoffice in Ponce on March 24th last about nine o'clock in the morning and that I admitted him in the post office and opened the door, is not correct. I did not see him there at any time that day. I do not know of my own knowledge that the Adjuntas mail arrived at all that day. It is due, to the best of my recollection, between ten and ten-thirty

o'clock. Sometimes it gets there earlier when the man carrying it rides horseback but generally he walks.

The defendant rests; except to offer the post office record for which Mr. Miller had sent, when it arrived.

In Rebuttal.

The United States recalled R. A. MILLER who testified.

The clerks in the post office at Ponce March 24th last were Mr. Salicrup, Mr. Skinner, James Stephens, the janitor, the defendant, the delivery clerk, James Oppenheimer. These were all. I was postmaster. Oppenheimer is a small man, a little shorter than I am but not near as large as I am.

I was not in the post office that Sunday morning to receive the Adjuntas mail. I think Oppenheimer is attempting a moustache; quite sure of it. He is a short man, tolerably fleshy. He is not here. He is down to the post office. There were also letter carriers there. They would be on duty after the arrival of the San Juan mail. None of them had access to the interior of the post-office. Oppenheimer did not have the key to the office. I am sure about that.

Cross ex. by Mr. DEXTER:

There is a clerk besides Oppenheimer who does not appear here as a witness. Mr. Hodge the money order clerk, but he has no official duties there on Sunday.

79 Re-direct:

Mr. Hodge is a tall gentleman, rather older looking than the rest of us. He wears a moustache and beard.

United States rests.

The defendant recalled R. A. MILLER.

Witness handed a book.

Said: This is record of the arrival of mails——not departures.

The Adjuntas mail was scheduled to arrive at 10:30 a. m. It is in the book here as arriving on March 24th at 11:20. That mail was carried by the witness who appeared her, Margaro Gonzalez.

Cross ex. by DIST. ATT'Y:

The dispatch clerk keeps the books. He makes the entries in it. Mr. Crowley was the dispatch clerk on duty that day. The handwriting of that entry is James Stephens', I think, but am not sure. Gonzalez was not a regular carrier and did not sign the book. I wrote that signature in there myself. I made that entry because

we were asked for the name of the carrier that day by the inspector's office and on receipt of the information from Adjuntas I made a record in there in order that we might keep his name. The man who arrived with the mail that morning did not sign it. It was not always customary for parties bringing mail to sign. With the San Juan mail it is usually sent for to the playa. With the Adjuntas and Yauco mails it is not.

Re-direct by Mr. CROWLEY:

Question. The Adjuntas mail carrier testified that he signed the book on that day that he delivered the mail. Is there any signature of his there on that book, the mail carrier I mean?

Ans. The Adjuntas mail-carrier—no sir.

The defendant rests.

The United States recalled DAVID A. SKINNER.

Witness shown book.

This is book of arrival of mails. The entry in this book, "One pouch, Adjuntas, 11:20" looks like Stephens' writing. It looks like his writing.

United States recalled R. A. MILLER.

The condition of that entry "One pouch, Adjuntas" when I first saw it was "Ponce and Adjuntas. One pouch, Adjuntas, 11 o'clock."

80 I directed Stephens to change that to 11:20 because 11:20 was the hour when he arrived at the office and found the Adjuntas mail there, and I told him that it was impossible for him to have received the mail before he arrived at the office and his arrival was at 11:20 therefore to make the record read 11:20

Mr. CROWLEY: I offer this book of the arrival of the mails in evidence as to the entry made on March 24th last as to the arrival of the Adjuntas mail.

The COURT: I understand it as offered.

JAMES STEPHENS recalled by United States.

Book shown witness.

I know this book. Have made entries in it. This entry made Sunday, March 24th "Ponce and Adjuntas, one pouch, Adjuntas" was made by me when the San Juan mail came in. I did put the time there besides this "One pouch Adjuntas" I put it there that time. I put 11 o'clock there b-*acuse* that was the time I went to the office. The mail carrier was not there then. I don't know that that was the time he got there. That was the time I went there. I did not see the mail that left there that morning.

The evidence was here closed.

The COURT: Gentlemen, if you have any requests to charge to make, make them in writing and submit them to me now as I will charge the jury now.

After receiving the written requests to charge the court made the following charge to the jury.

Charge of the Court.

"GENTLEMEN OF THE JURY: The careful attention which you have given to the hearing of this case has shown to the court and to everyone else that you realize the importance of it. It is unfortunate that we are compelled to investigate a transaction of this character, but it is necessary to good government that we should do it.

As I have had occasion to say before, republican government does not mean a government of license, unbridled license; it means a government within the law. As long as a man keeps within the law he is entitled to his life and his liberty and all the other rights that attach to him as a citizen, but whenever he goes outside of the law and violates that law, which as a good citizen he is bound to respect, then he must be compelled to respect it in order that other good citizens may be protected.

81 I have had occasion to say in Porto Rico often, and I am going to repeat it now, that during nearly forty years' experience as a lawyer and a judge, I have come to be a positive and unquestionable believer in the jury system. I have learned from observation that while now and then you get a trifling man upon the jury, while now and then a jury may possibly get wrong, that yet, in nearly every case, a jury of twelve men hunt for the right of the thing and nearly always find it. That is what you have sworn to do in this case so far as lies within human power.

You entered the jury box saying: I have no bias in this matter; I have no personal interest in this matter; I have no prejudices in this matter; I will do what I think to be right upon the testimony in this case. That is all the law asks you to do, but that much the law requires of you as good citizens, and as good men loving your country and the protection and enforcement of the law. The Government has no desire to deprive any man of his liberty unjustly. It has always been the pride of the common law to protect a man in his liberty, and in his life. The crowning feature, perhaps, of the common law, has been its protection of the personal liberty of the citizen. The Government wants to deprive no man of his life or liberty unless he himself has forfeited his right to it by his own conduct. Then the Government, as I have said, says that it must be done in order to protect the lives and property of other citizens.

I have said this much to you gentlemen, in a general way. Now we will come to the case before us and to detail. You are to consider whether you will deprive a citizen of the country of his liberty upon the ground that he has violated the law. Now, in considering that question, you consider first, with the presumption in his behalf,

that he is innocent. That is the starting point. Through the whole case he is attended with that presumption of innocence, and he must be proven, as the law says; guilty beyond a reasonable doubt; that is: he must be proven, upon the whole case, guilty beyond a reasonable doubt. That does not mean that you are to acquit him upon any little cobweb of a doubt—any doubt as to some immaterial circumstance. If I sat here and aimed a gun at Mr. Dexter yonder and the gun fires and he falls dead, you would think it absurd in the man over there to say that I did not kill Mr. Dexter because he did not see the bullet when it was on its road to him—that would be unreasonable. I repeat, gentlemen, it does not mean any little cobweb of a doubt in your minds, but it does mean that if you have a reasonable doubt upon the whole evidence, upon the whole case, that the defendant has been proven guilty then it is your sworn duty to acquit him. In other words, gentlemen, if you have in your minds, from the evidence on the whole case, any reasonable theory consistent with the innocence of the accused then you should acquit him. If you have in your minds any reasonable theory, upon the testimony, by which you can reconcile all the facts that have been proven, and under these the defendant is not shown to be guilty, then you should acquit him; otherwise you should find him guilty.

Now, the laws of Congress, as you have seen from the testimony here, are pretty strict as to the enforcement of the postal laws of the United States. It is necessary that they should be enforced as to any man that is guilty. Every man is interested in the postal laws just as he is interested in the currency or anything of that character in the country. Every man is interested in the law abiding condition of his country. The postal laws, as you have
82 seen from the testimony, are pretty strict as to the duties of the postal officials. To a person unacquainted with them they would seem strange and unnecessary. Perhaps it seems strange that a postmaster, for instance, keeps a record of all that goes through his hands. The reason that the law requires that—that the regulations require it—is that in case anything is lost it can be traced. If you lose anything in the mails, if I lose anything in the mails—by means of these records you can trace the thing and follow and find it; therefore the laws of the United States and the regulations are very strict as to officials in the performance of their duties; and we have a statute which says that if a post office official—whether he be an official occupying a place like the defendant here, or some other place—that if he secretes or even delays any letter or parcel in its course of transmission through the mails, he being a postoffice official—if it has nothing of value in it even—and if he embezzles or makes way with or delays any letter or package—although it has nothing of value in it—that he is liable to punishment.

Then we have another statute which says that if a man embezzles any letter containing certain things of value—which I will enumerate to you later—that if he embezzles that letter or embezzles anything of value that is in it, he is liable to punishment for doing it.

Now in this case—having these statutes before us—there is an in-

dictment against the defendant of three counts, as we term it. Counts are mere statements of a matter; that is what we mean by a count. You state a matter in one form, then you state it in another form and then again in still another form. The indictment in this case contains three counts. They all relate to the same transaction, but there might have been an embezzlement of a letter; there might have been an embezzlement of the value that was within that letter—hence, these different counts are all embraced in the same indictment. Now, you can find the defendant guilty upon all of the counts in the indictment, or, if you fail to find that one count has been proven, you can find him guilty upon the other two counts in the indictment, naming them; first count, second count or third count, whatever they may be; and you can find the defendant guilty upon one count only of the indictment; or you can find him "not guilty" which means not guilty on any of the counts in the indictment.

The first count of this indictment charges the defendant, Harold Crowley, that he, being a postoffice official and clerk connected with the Postal Department, and acting as such, and while in the discharge of his duties as such, embezzled a letter which was directed to the San Juan postmaster containing Government funds, or containing gold coin, United States notes, bank notes, bank checks, amounting to altogether three hundred and seventy-seven dollars, in money and checks to the amount of three hundred and seventy-seven dollars out of the letter. Now that is the first count.

The second count is that he, being such official, feloniously and unlawfully secreted and destroyed this letter—which is described—which came into his possession as such clerk in the postoffice, directed to the San Juan postmaster and containing certain articles of value—which are named in the count—bank notes, silver certificates, etc. property of the United States, and that he feloniously embezzled and stole this letter.

83 Now the third count is a little more in detail in one respect, that is, charges, he being such official, that a letter from one Rafael Delgado, postmaster at Yauco, directed to the postmaster of San Juan, being started in the mails, containing money and other articles of value, bank notes, etc., amounting to three hundred and seventy seven dollars—came into his possession as clerk and that he secretly and feloniously embezzled this letter.

Now, gentlemen, I think you understand with what the defendant is charged. There are three counts: One may be a little more in detail than another—the third count for instance says who mailed the letter and where it was mailed from, and the other two do not say that. I repeat that you can find the defendant guilty upon all three of the counts, or upon any one of them and not upon the other two; or upon any two of them and not upon the other one. For instance, if you were to find from the testimony to the exclusion of a reasonable doubt, that the postmaster at Yauco had mailed this letter, and that the defendant was guilty of embezzling the letter and embezzling the articles of value in it, and stealing

them, then he should be found guilty upon all of the counts: if he embezzled the letter and the articles of value in it, and it came from the Yauco postmaster and into his possession as such clerk, then you will find him guilty upon all the counts. In other words you will examine the counts in this indictment, and from the evidence on the whole case you will say to yourselves: Has this defendant been proven guilty on this count, or on this other count or on this other count: has he been proven guilty, beyond a reasonable doubt on all or any one of these counts. If not, he should be acquitted.

Now, gentlemen, I am not going to enter into a detail of this testimony. I merely want to say this, that so far as the questions of law in this case are concerned you are bound to accept the law as charged to you by the court; but so far as the facts are concerned you yourselves are the judges. You have no right to judge of the law of the case, and I have no right to take away from you your right and duty to judge of the facts. Under the law, as given you by the court, you are to find the defendant guilty or not guilty upon the facts that have been proved in the case, and you are just as much the judges of the facts as I am the judge of the law.

I repeat, I am not going to enter into a detail of the testimony. I have a right, under the law, to detail that testimony to you, but I have no time to do it to-night, and, as a general rule, I am not disposed to do it in cases where the jury are intelligent and have listened carefully to the testimony. I will, however, say to you gentlemen, that all the testimony in this case is circumstantial. What I mean by that is that no witness testifies in this case that he saw the defendant take this letter or saw him take any of these articles of value in the letter. Now, as I had occasion to say the other day to a jury, it is often said that circumstances do not lie. That is true; a fact never lies. You see a man yonder; if he is really there it is a fact and a fact never lies. But the danger is in men drawing false inferences from facts and circumstances. You say: this circumstance exists, this other exists, and therefore this result must follow. You may draw false inferences from facts and in this respect I would caution the jury that in considering the circumstances proven in this case, that may lead to this result or that result, you must be very careful in finding what result follows, because there is where the human mind is liable to err.

84 The defendant, gentlemen, is not only entitled to this reasonable doubt, which I have defined to you, but he is entitled to the benefit of his character, whatever it may be. It has been stated to you, as you recollect, that a man without character is like moulded brick or painted clay. A man lives and lives and he builds up a character day after day and he places one brick upon another until he makes a grand edifice.

Such a man is entitled to the benefit of that character. In case some gentleman of your acquaintance who has always stood high in the community, should suddenly be charged with some outrageous offense, men would hesitate to believe it. The man who has always borne a good character in his community is entitled to the benefit

of that character. Yet I say to you, upon the other hand as you know and has been said to you here, men who have borne the best of characters fall. That is human. Sometimes they fall and sometimes they can hardly tell why. It was alluded to in argument here in another case the other day that a distinguished professor in a college, who had always stood high, had some trouble over matters of accounts with a brother professor, and he killed him and cut up his body and destroyed it. I say to you, gentlemen, that the defendant is entitled to the benefit of his character whatever it may be, and where it is a doubtful case the jury should give weight to that character. Of course, if a man is proven beyond all doubt to have committed the offense charged, then that character cannot have as much weight with the jury as if the case were doubtful.

It must be proven to the exclusion of a reasonable doubt that the offense charged was committed; and it must be proven to the exclusion of a reasonable doubt that the defendant did it. This must be proved either by circumstantial or positive testimony. Where the evidence in the case—I think I have substantially said to you, gentlemen, where the evidence in the case is wholly circumstantial, that if you can reconcile all these circumstances the existence of them as proven, with the innocence of the defendant, why, you must do it. Unless these circumstances show, to the exclusion of a reasonable doubt that the defendant is guilty then you must acquit him. It lies upon the Government to make out this state of case. These two parties stand upon exactly the same footing before you gentlemen—the defendant and the Government. The fact that this was Government money, the fact that the United States is a party on one side of this case, does not mean that the United States has any greater rights before you than the humblest individual in Porto Rico that is on trial for his life or his liberty. You consider them both—the United States and the defendant, as being exactly upon the same footing before you."

Gentlemen (addressing the attorneys) have you anything further to ask that I should charge to the jury?

DIST. ATT'Y: I have nothing, your honor.

Mr. CROWLEY: We have nothing further, may it please the court.

The COURT: If you have any exceptions to the charge, please state them?

Mr. CROWLEY: I will state to the court that I have no exceptions to make to your honor's charge either wholly or in part.

85 DIST. ATT'Y: There is nothing on the part of the Gov't.

The court then swore in the deputy marshal to take charge of the jury.

The COURT: "Gentlemen (addressing the jury) in making a verdict you write it on the back of the indictment. Any one of you can act as foreman. In the petit jury system no one is designated as a permanent foreman. You select your own foreman. You will now retire, gentlemen, and make a verdict."

The jury returned to the court room at 11.20 p. m. and rendered the following verdict: "We, the jury, do find the defendant guilty

as charged in the indictment. E. Torres, foreman, Ponce, 18th of May, 1901.

The jury were polled and each announced this was his verdict.

(On May 21st, 1901, during said term of court the court imposed the following sentence on the defendant:)

Sentence of the Court.

Harold Crowley, you have been indicted by a grand jury of Porto Rico and you have been tried upon the charge of having embezzled a certain package or letter from the mail, with its contents. The court endeavored, so far as it knew how, to afford you a fair trial. In every *every* way known to the court you were given a fair trial. The jury, after patiently hearing the testimony, have found you guilty. Now, have you anything further to say why the sentence of the court should not be pronounced upon you?"

The DEFENDANT: Nothing, your honor, save that a paper has been filed with the clerk.

The COURT: Mr. Clerk, give me that paper.

The court reads this paper which, copied, is as follows:

U. S. District Court, District of Porto Rico.

THE UNITED STATES
vs.
HAROLD CROWLEY.

MAY 21, 1901.

The above defendant, upon being asked if he had anything to say why sentence should not be passed upon him on the verdict of the jury, moves in arrest of sentence and judgment upon all the grounds and reasons stated by him and through his counsel, F. H. Dexter, from the commencement of this court at San Juan, Porto Rico, in April, 1901 and upon his alleged trial at and in this alleged court at Ponce Porto Rico, down to the rendering and entry of the verdict of the jury herein, May 18th, 1901.

(Signed) HAROLD CROWLEY.
F. H. DEXTER,
Attorney and Counsel.

86 The COURT, continuing:

"This is, by no means, a pleasant duty to the court, and in all of the experience I have had, perhaps no duty has been more unpleasant than this. I now do not recollect, when I had to write the words or speak the words that took the life or liberty of a man, that I had a more unpleasant feeling in doing it than I now have in your case. You are a young man; you have just come upon the

plane of manhood, and you have had every opportunity in the world, by reason of your raising and your education to make a man of yourself. In a moment, perhaps, of dissipation, or in some way, you have fallen, but not beyond the point of retrieving your former status. In the future, and if you behave yourself properly, there is a chance for you, at your age, of still making a man. You have had every opportunity in life that a young man could have. You seem heretofore to have improved them, but not to have done so on the occasion of this transaction.

Without saying anything further, because I dislike to talk about it—it is in severing you from your family—it is like separating the nerve and ligaments from the bone and the flesh from the heart—it cuts things asunder for awhile—it cuts them asunder, not only to the danger of the feelings but the lives of those who are near and dear to you—the sentence of this court is—and I have taken everything into consideration—the sentence of this court is that you be confined at hard labor in the penitentiary of Porto Rico for four years. Mr. Marshal, the defendant is in your charge."

87 And following the sentence of the court, the following proceedings took place in said cause, to wit:

First. The petition of the defendant for the allowance of an appeal from the sentence and judgment of the United States district court of Puerto Rico, to the Supreme Court of the United States.

Second. The assignment of errors accompanying said petition.

Third. The order of the judge of said district court and of said district court allowing said appeal and fixing the amount of the undertaking to be given upon said appeal.

Fourth. The citation issued in said district court by the judge thereof to be and appear in the Supreme Court of the United States at Washington, D. C.

Which proceedings are not made a part of these exceptions because the same appear in the records of said cause in this court.

And because none of the said exceptions so made do appear by the said record, the counsel for the said defendant did then and there, in due form, propose his said case and exceptions to the rulings, decisions and refusals of the said court and requested the said judge to put his seal to this case and bill of exceptions, containing the several matters so as aforesaid produced, given and offered in evidence, and the objections and exceptions thus made and taken according to the form of the statutes of the United States of America in such cases made and provided, and the practice of the said court.

And thereupon the said judge, at the request of the counsel for the said defendant, has hereunto affixed his name and seal to this case and bill of exceptions.

Witness my hand and seal this 14th day of December 1901 at San Juan, in and for the district of Puerto Rico.

(Sig.) WM. H. HOLT, *Judge.*

88 *Description and Contents of Exhibits.*

89 EXHIBITS.

EXHIBIT E.

Statement of Harold Crowley in Connection with the Loss of Registered Package from Yauco to San Juan, P. R.

I, Harold Crowley, dispatching clerk of the Ponce P. O. state that on Sunday, March 24th, 1901, I went to the post office about 8:15 and found the mail from Yauco on the table; it had just arrived and was being opened by the janitor, Stephens. The mail was dumped on the table by Stephens and he handed me the registered packages and also the two cards. The registers were placed in the box provided for that purpose by me and I locked it. There are two keys to the box, one in the possession of Mr. Salicrup and the other was in my possession. I remained in the office not more than five minutes. I went then to the Tropical house, packed my trunk and then — same to the warehouse of Morales and Co. at the playa in a carriage in company with Mr. Edwards and Mr. Litchfield.

I returned from the playa about ten a. m. and went to the Casino in company with Mr. Edwards, Mr. Litchfield and Mr. Chalk. While we were in the Casino Mr. Salicrup passed by, and I called him in and asked him if he would receive and dispatch the mails that day as I wished to go to the Quintana baths. While we were talking the mail coach from San Juan passed and Mr. Salicrup left. We remained at the Casino about twenty minutes; then I went to the post office and secured three letters. I found that only Salicrup and Stephens were in the post office at that time. After leaving the post office we had luncheon at the Hotel Francais and then about 12:30 went to the Quintana baths, Litchfield, Edwards, Chalk and myself. We returned from the baths about 2:30 p. m. Sometime after my return, during the afternoon, I went to the postoffice, and Mr. Salicrup told me that a registered package from Yauco was missing. I went immediately to our registry clerk, Skinner, at his home. I found him there, and we then went together to see Mr. Miller the postmaster. From there we went to the railroad station and sent a telegram to the postmaster at Yauco, asking if the package had surely been sent that he had entered on his card as 171. After that we drove around town together, Messrs. Litchfield, Edwards, Chalk and myself, until about 6 p. m. I went then to the Tropical house, secured my valise, and went to Rodriguez's café across from the postoffice, where I waited until the mail coach was ready. I left on the mail coach for San Juan at 7 p. m.

Mr. Miller paid me my salary on Saturday evening Mar. 23rd at the Hotel Tropical about dinner time. On Mar. 1st, 1901 he paid me $5.56 and on March 15th, $35 and on Saturday, Mar. 23rd about

$51.00, up — and including the last day of March. I received no other money in Ponce, but within the last five months I have at various times received sums of money from Mr. William A. Hutton in San Juan, aggregating about $215. and from Mr. W. K. Landis, postmaster, $25.00. All this money was loaned to me personally and was used by me for my personal uses. Up to the time of my reporting at Ponce for duty, I divided the salary of the post-office at Arecibo with the present postmaster and thereby received about $50.00
90 monthly. While in Aguadilla instructing Mr. August Font in the duties of postmaster he paid me about $45. All of these sums of money were used by me for my personal expenses. When I left San Juan to come to Ponce I had about $90 with me. When I left Ponce to go to San Juan I had about $150.00. There was no particular occasion for me to draw on my salary on March 15th. but I thought it was the rule to pay twice a month. I have received no money from home or from any other sources, except one or two small items, as I borrowed from Mr. Lee Nixon $5, and Mr. Hugh Barclay $5.00.

(Signed) HAROLD CROWLEY.

Sworn to before me this day of our Lord March 29th, 1901.

(Signed) ALFRED A. SMITH,
P. O. Inspector."

This statement is endorsed on the back. "Crowley at Ponce" and "U. S. *vs.* Crowley, Exhibit 'E,' see page 73 of Record."

Exhibit F.

Questions propounded by Inspector Smith to Mr. Harold Crowley and the latter's answers thereto in connection with the loss of registered package from Yauco to San Juan, P. R.

Q. In your previous statement made in Ponce, you stated that in the last five months you had received about $200 fro- Mr. Hutton.

A. Yes, about $215.

Q. Now when was the last time he loaned you money.

A. I don't remember the date. I reported for duty on the 27th, and it was about the 24th of February.

Q. That was the last time.

A. Yes, that was the last time.

Q. Well, this last time, when you and I went to Ponce on the 25th, did you give him a package containing money to keep for you until you got back.

A. I left a note in the hands of this Isaac, somebody—his last name I don't remember—who was the bar-keeper at Wenar's and bills and money in an envelope.

Q. How much was in that envelope.

A. $65, if I remember rightly.

Q. Did you tell Mr. Hutton how much was in the envelope.

A. I wrote a note, yes, that I put in the envelope, telling him how much was there, and as I say, gave it to this Isaac someone.

Q. Has Mr. Hutton returned that money to you.

A. No, not yet.

Q. How much money have you now.

A. I have $18 in one dollar bills, three ten dollar gold pieces, $30, and $4 in change.

Q. In addition to that amount you have how much.

A. $65 which I left with him that night. Yes.

91 Q. Is that in bills?

A. Part in bills. It was almost all in bills except two five dollar gold pieces, one ten, and the balance in bills, if my memory is right, that I left with him.

Q. When Janitor Stephens opened the package from Yauco on the arrival of the mail Sunday, March 24th, are you positive that he handed you all the registers?

A. Why, the registers he placed right on the corner of the distributing case, and I took them and placed them in the box there. As far as I could see. Yes, he gave me all.

(Here on statement is written, in ink, "Exhibit 'F' for Gov't. See page 75 of Record. H. P. L.)

Q. Were you standing close to him at the time?

A. Within four or five feet I should say.

Q. Are you sure that he could not have taken any of the packages and secreted it?

A. Why I don't see how he could, no; unless he had been practicing feats of magic.

Q. Are you positive that you securely locked the box?

A. Yes, pretty positive, because that is a snap lock and usually by hooking it in, it locks itself each time.

Q. After placing the registers in the box did you remain in the office any length of time?

A. No, my recollection is that I went to the water-closet at the rear and from there went to the hotel, as I stated before. I was there in all about five minutes, possibly ten minutes, five or ten.

Q. Then you left the office with no one in it except Janitor Stephens?

A. He was the only one there when I left.

Q. Do you know how many registers you put into the box?

A. I could not swear to the number, no. I made a habit as a rule to count the packages and verify them with the card but as to the exact number that morning, I would not state.

Q. You did not then verify the number of registers with the number called for on the card?

A. I did not; I usually used to do that.

(Signed) HAROLD CROWLEY.

Sworn to before me this day, March 29th, 1901.
(Signed) ALFRED A. SMITH,
P. O. Inspector.

This exhibit is endorsed on the back "Crowley at San Juan" also "U. S. *vs.* Crowley, Exhibit 'F' see page 75 of Record.

92 EXHIBIT "D."

This exhibit is a small yellow card called a package receipt card. It has printed on the front.

"Registered package receipt. 1556. Post Office Department. Official business. A penalty of $300 is fixed by law for using this card for other than official business. Post office at (blank for dating stamp) Stamp of receiving office and date of return. Receipt on other side and return this card by next mail without cover. P. M. at (blank for name town intended) county of —— State of —— Registered Mar. 23, Yauco, Porto Rico (in rubber stamp) Stamp of dispatching office and date of dispatch, registered '23' (in rubber stamp) See p. 40 of Record (in ink).

On the back this card contains the following, printed and written.

Received from the postmaster whose name appears on the other side, the registered packages described as follows No. of package; postmarked at ——. Date of postmark, name of P. O. Addressed. (Written in the spaces provided there for the purpose the following) 169, Yauco, 3-23, New York; 170. Yauco, 3-23, San Juan; 171, Yauco, 3-23, San Juan (this number 171 has a pencil line run through it and the words "Not received" written across it) 168, San German 3-24 Ponce; 605 Mayaguez 3-24 Ponce; 606, Mayaguez, 3-24, Ponce; the name "Robert A. Miller is stamped on with a rubber stamp and the intials "D. A. S." appear thereon written with an indelible pencil. Also the word "five" is written indicating the number of regi-ters received.

EXHIBIT "G."

This exhibit is the envelope handed to Postmaster Landis for keeping. It is an official envelope, with the following printed thereon: "Department of Posts of Puerto Rico, Director General of Posts, San Juan. Official business. A penalty of $300 is fixed by law for using this envelope to avoid payment of postage on private matter."

Written on the envelope is: U. S. *vs.* Crowley. Exhibit G. Relating to envelope only, see page 97 of Record. (Exhibit G. for Gov't. See page 97 of Record. H. P. L.)

On the back are written the names, "W. K. Landis, D. E. McLeod and Alfred A. Smith.

93 EXHIBIT A—Copy of Remittance Letter Accompanying Funds Sent in Package 171.

This has the following printed thereon.

"No. 20. Remittance letter. Describing surplus money order funds remitted by a postmaster to his depository. Unless remittances are made in strict compliance with section 1404, P. L. & R. of 1893, no credit will be allowed in case of loss in transit. This letter must be dated the day the remittance is made and not previously; the date to be that upon which the registered package leaves the post office irrespective of the time when such package was prepared in readiness to be forwarded. If not so dated the remittance is ante-dated; the practice of ante-dating remittance letters generally indicates fraudulent intent and will not be tolerated. Postmasters at offices receiving deposits are instructed to report all cases of the kind to the department. This blank must not be used for remitting postal funds; if so used the accounts of the postmaster will be complicated.

Post office Yauco (Yauco being written) Porto Rico. To the postmaster at San Juan (written) date March 23rd, (written) in parentheses Write date upon which the registered package actually leaves the P. O.)

SIR: I herewith remit for deposit the sum three hundred seventy-seven (written) dollars, being the actual amount of the surplus (omitting cents) of money order cash on hand at the close of business on March 22 (written) 1901 My cash balance as shown by my cash book at close of business on the date above named was (figures written) $553.11. From that balance I deduct the amount of all the remittances (not including this remittance made prior to this date, for which certificates have not been received nor credit taken in my cash book,) $100. I also deduct the amount of unpaid advices on hand, not more than two weeks: $75.50. The total amount thus deducted is $175.50 The actual amount of surplus is therefore $377.61.

Particulars of remittance. Here describe the blank bills, coin or draft (See sec. 1404 P. L. & R.)

1 check on De Ford and Co.? Ponce, No. 39, dated March 23, in f'r of J. M. Gatell, $60; 1 check Am. Col. bank, No. 0319 dated March 16, in f'r of Alejandro Sallaserr $30; 1 check ditto Juan Antogirge, $30, No. 0318, 1 check, ditto, No. 0317, Francisco Ortiz $30.

Three ten dollar bills series 1880–1882–1891; Nos. A24281565v, V182607E, E30295488–, $30; 6 five dollar bills, series 1880–1882–1896–1899, Nos. A46680412, A45317222– T817083E–25535872–32574620–10954926. $30. 42 one dollar bills, $42; 12 ten dollar gold pieces, $120., 1 five ditto, $5, total amount remitted $377. Witness as to counting, sealing and dispatching of above amount (signed) Salvador Amil Negroni; Rafael Delgado, postmaster.

This exhibit has written on its face "U. S. *vs.* Crowley, Exhibit A. for Gov't. See page 6 of Record. H. P. L." and on its back is the same.

94 EXHIBIT B.

This is a sample registered package envelope. It has printed on its face, in red letters, the following:

U. S. P. O. D. registered package. Be sure to seal this package securely and to postmark it plai[illegible] Fourth class P. M.'s must write in ink, in the brackets, on eac[illegible]nvelope, the names of their post office whenever they receive a new supply. P. O. —— State —— (in brackets) Postmark of mailing office on date when mailed. No. — Postmaster at —— county of —— State of —— (in brackets) No. 7—R. P.

On its back is printed:

Record of transit. Condition. State if not good. Signature. By whom received and date. New instructions. To facilitate tracing a complete record must be made by every postal officer handling this package as set forth in sec. 1081, page 384 of the regulations, etc.

Written on the back is: "U. S. *vs.* Crowley. Exhibit 'B' see page 7 of Record, H. P. L." This is written twice.

Part of this exhibit also is a sample M. O. B. envelope. Written on the front of this is: "Exhibit 'B' for Gov't. U. S. *vs.* Crowley, see page 7 of Record."

Printed thereon is:

Post Office Department, post office —— Porto Rico, official business. (No. 5–k) This envelope to be used for remittances only. Penalty for private use $300. Multa de $300 por uso particular. Postmaster —— county —— M. O. B."

Exhibit C. is a map of the interior of the Ponce post office. It is endorsed on the back, in ink, "U. S. *vs.* Crowley, Exhibit 'C' for Gov't see page 35 of Record. H. P. Leake" This is written twice.

(Copy.)

95 United States District Court, District of Porto Rico.

THE UNITED STATES
vs.
HAROLD CROWLEY.

To the Honorable R. W. Peckham, associate justice of the Supreme Court of the United States:

Harold Crowley, the above named defendant, conceiving himself aggrieved by the indictment, trial and verdict of the jury and the sentence and judgment entered on the twenty-first day of May, 1901, and upon an assignment of errors filed herewith, comes now by his

attorney and petitions for an order allowing him, said defendant, to prosecute a writ of error from the honorable, the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided, and also that an order may be made that the security and undertaking which the defendant heretofore on his appeal from said judgment and now on file in the United States district court for Porto Rico and furnished upon said appeal to the United States Supreme Court may stand as the security and undertaking upon the granting of this writ of error and that upon the granting of said writ of error all further proceedings under said judgment in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And your petitioner will ever pray.

Dated Dec. 11, 1902.

HAROLD CROWLEY, *Petitioner.*

Filed Jan. 5, 1903.

96 DISTRICT OF PORTO RICO, } ss:
City of San Juan, }

Harold Crowley being duly sworn says that he is the defendant in the above entitled action. That he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge.

HAROLD CROWLEY, *Petitioner.*

Signed and sworn to before me this 11th day of December, 1902.
(S'g'd) JOHN E. POUND,
United States Commissioner.

97 United States District Court, District of Porto Rico.

THE UNITED STATES } Assignment of Errors.
vs.
HAROLD CROWLEY. }

Now comes the above named defendant's attorney and files the following assignment of errors upon which he will rely under the writ of error herein and his writ of error from the judgment of conviction made and entered herein May 21st, 1901, in said district court for Porto Rico.

First.

That said court erred in the drawing, impaneling and formation of the grand jury impaneled at San Juan in said district at and for the April term, 1901, of said court, at which term, and by which pretended grand jury the indictment herein against said defendant was found and presented and filed in this court, and upon which

indictment this defendant has been tried and convicted, and that said court further erred in overruling the objections and demurrers of defendant to the drawing, organization and impaneling of said pretended grand jury and further erred in refusing to hear and investigate the objections of defendant to the drawing, organization and impaneling of said grand jury and to the legal qualifications, and competency of certain persons named by defendant in said court, to sit and act as grand jurors in and for said district of Porto Rico at said term of court.

That said grand jury was illegal and its acts and proceedings in this defendant's case were null and void.

Filed Jan. 5, 1903.

98 *Second.*

That said court erred in overruling the demurrers interposed by this defendant to the indictment filed in this cause, and to each count thereof, and by holding and deciding that the facts and allegations stated in said indictment were sufficient in fact and law to put this defendant upon his plea of not guilty, and by overruling all defendant's objections to the sufficiency of said indictment and its counts before pleading not guilty to the same; and also upon the trial of this defendant thereon at the May term, 1901, of this court.

Third.

That said court erred upon said trial, at the close of the case and evidence on the part of the United States in refusing to direct a verdict of acquittal of defendant upon the various grounds stated by said defendant upon his motion for such direction; and particularly on the ground that said indictment, nor any of its counts, did not contain any averment of the deposit and mailing of the letter mentioned therein, in any post office of the United States or place for the deposit of mail matter; nor did the second count of said indictment contain any allegation that said letter had not been delivered to the person to whom it was addressed; nor was there any evidence at the close of the case on the part of the United States that said letter had not been delivered to the person to whom it was addressed.

Fourth.

The court erred upon said trial in receiving evidence offered by the United States, to which this defendant objected, and in overruling defendant's objections thereto; and also erred in re-
99 fusing to receive evidence offered by this defendant, all of which appears in the case and exceptions filed herein.

Fifth.

The court erred in rendering judgment against the defendant in said cause upon the indictment and evidence, and said judgment is contrary to law and to the facts.

Sixth.

The court erred in this cause in exercising jurisdiction or in attempting to exercise jurisdiction over this defendant in his trial upon said indictment, and in overruling defendant's plea to the jurisdiction of said court upon the ground that there was not any power or authority in law for the holding of said court at Ponce in said district of Porto Rico, at the time at which defendant was tried and said judgment rendered, and commencing May 13th, 1901, and all its proceedings against defendant at said alleged regular term were and are null and void.

Wherefore said defendant and appellant prays that the judgment of said court be reversed and such directions be given that full force and efficacy may come to defendant by reason of the foregoing errors, and consonant with law and justice in his case.

RICHARD CROWLEY,
Attorney for Harold Crowley.

[Endorsed:] Copy No. 2.

100 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the district of Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, or some of you, between The United States, plaintiff, and Harold Crowley, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of December, in the year of our Lord one thousand nine hundred and two.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Dec. 12, 1902.

101 [Endorsed:] 3 No. —. In the district court of the United States, for Porto Rico. — term, 190– The United States *versus* Harold Crowley. Writ of error.

102 UNITED STATES OF AMERICA, *ss:*

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the district of Porto Rico wherein Harold Crowley is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 12th day of December, in the year of our Lord one thousand nine hundred and two.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Dec. 12, 1902.

103 On this 2nd day of January, in the year of our Lord one thousand nine hundred and three, I hereby acknowledge and accept service on behalf of the United States of the within citation addressed to the said United States.

N. B. K. PETTINGILL,
U. S. Attorney for District of Porto Rico.

Sworn to and subscribed the — day of ——, A. D. 190–
—— ——.

[Endorsed:] Original No. 4
104 [Endorsed:] 4 No. — In the district court of the United States, for Porto Rico. — term, 190– The United States *versus* Harold Crowley. Citation.

105 (Original filed Jan. 5, 1903.)

United States District Court, District of Porto Rico.

THE UNITED STATES
vs.
HAROLD CROWLEY.

It is hereby stipulated and agreed by and between The United States through its attorney, N. B. K. Pettingill, for the district of Porto Rico, and by the defendant, Harold Crowley, and the Fidelity & Deposit Co. of Md., surety upon the bond herein mentioned, that the bond *an* undertaking which was given for the appearance of said Harold Crowley pursuant to law, and the terms of said bond, on his appeal from his conviction and sentence in the above court on May 21, 1901 and which bond is now on file in said court, may stand as the security and undertaking for said Harold Crowley's appearance, pursuant to law, upon the allowance of writ of error by Associate Justice Peckham of the Supreme Court of the United States at Washington, D. C., December 12, 1902, and with the same force and effect as if now executed and given upon the allowance of said writ of error.

Dated December 12, 1902.

HAROLD CROWLEY,
Defendant Above Named.
FIDELITY & DEPOSIT CO.
OF MD.,
By E. L. ARNOLD,
Gen. Ag't, Surety.
N. B. K. PETTINGILL,
U. S. Attorney.

106 In the District Court of the United States for Porto Rico, January 5th, 1903.

UNITED STATES
vs.
HAROLD CROWLEY.

It being made known to the court that a writ of error has been granted herein by Justice R. W. Peckham of the Supreme Court of the United States.

It is now ordered that the record and all the proceedings herein together with this writ be at once forwarded to the Supreme Court of the United States by the clerk of this court, and a stipulation being now filed signed by defendant Harold Crowley and the Fidelity and Deposit Company of Maryland by E. L. Arnold, general agent, and by the United States attorney, for this court that the bond which was given herein for the appeal of said Harold Crowley and

the terms of it, on his appeal from his conviction and sentence in this court on May 21, 1901, and which is now on file in this court be extended and stand as the security and undertaking for said Crowley's appearance pursuant to law and of the same force and effect as if now executed and given upon the allowance of said writ of error, which is dated Dec. 12, 1902.

107 In the District Court of the United States for Porto Rico.

THE UNITED STATES
vs.
HAROLD CROWLEY.

I, Ricardo Nadal, clerk of the district court of the United States of America, for the district of Porto Rico do hereby certify the foregoing one hundred one typewritten pages, numbered from one to 101, inclusive to be a full, true, and correct copy of the record and proceedings in the above and therein entitle- cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error and appeal.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, this sixth day of January A. D. one thousand nine hundred and three.

[Seal United States District Court for the District of Porto Rico.]

RICARDO NADAL,
Clerk of the District Court of the United States for Porto Rico,
By FRANK ANTONSANTI,
Deputy Clerk.

Endorsed on cover: File No. 18818. Porto Rico D. C. U. S. Term No. 205. Harold Crowley, plaintiff in error, *vs.* The United States. Filed February 2, 1903.

FILE COPY.

FILED
APR 11 1904
JAMES H. MCKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 205.

HAROLD CROWLEY, PLAINTIFF IN ERROR,

vs.

UNITED STATES.

BRIEF FOR THE PLAINTIFF IN ERROR ON WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

RICHARD CROWLEY,
Of Counsel for Plaintiff in Error,
Lockport, New York.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 19982

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 205.

HAROLD CROWLEY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The defendant was indicted at the April term, 1901, of the United States district court for Porto Rico, held at San Juan, for violation of section 5467 of the United States Revised Statutes, relating to the postal laws.

He was tried at Ponce, Porto Rico, in May, 1901, convicted, and sentenced to four (4) years imprisonment at hard labor.

He took an appeal to and also sued out a writ of error to this court from such indictment, trial, conviction, and sentence, and the case is now here on such appeal and writ of error.

The writ of error is the proceeding relied on, the return being in substance the same in each proceeding.

The questions involved and the manner in which they are raised are as follows:

The Grand Jury.

First.

The defendant filed a plea in abatement to the indictment, setting forth that the grand jury which presented the indictment was illegally drawn and impaneled, and that it contained persons disqualified from being grand jurors in said court. That one was an alien and not a citizen of the United States or of Porto Rico; one not a resident of the island for one year; that seven of them were not assessed on the last assessment-roll of any district in Porto Rico on $200 of property belonging to him; that four of them named therein were not drawn from the box containing at the time of drawing the names of not less than three hundred persons possessing the qualifications prescribed in section 800 of the United States Revised Statutes, and which names had not been placed therein by the clerk of said court and a jury commissioner, as prescribed by act of Congress of June 30, 1879; that no writs of *venire facias* were directed by said clerk against said four persons, as prescribed by section 803 of the United States Revised Statutes; that the defendant was not present in court when said jury was impaneled; that he would be prejudiced by such improper impaneling of said jury, and prays judgment that the indictment be dismissed and quashed (Case, pages 3, 4, 5).

The United States attorney demurred to said plea. For the demurrer and grounds thereof see Case, page 67. The judge sustained the demurrer (Case, page 7).

THE INDICTMENT.

Second.

The defendant then demurred to the indictment and each count thereof.

For such demurrer and the grounds thereof see Case, page 8.

The judge overruled the demurrer (Case, page 8).

Third.

The defendant then pleaded "not guilty" (Case, page 7).

PLEA TO JURISDICTION.

Fourth.

When defendant's case was moved for trial at Ponce, May 17, 1901, he filed a plea to the jurisdiction of the court.

The United States attorney demurred to such plea.

The judge sustained the demurrer.

As to plea, demurrer, etc., see Case, page 9.

The defendant then moved the court to compel the United States attorney to elect upon which count of the indictment he would prosecute to trial.

The judge refused to do so (Case, page 9).

THE TRIAL.

Fifth.

Upon the trial the following questions arose, which the defendant claims were erroneously ruled and held against him, and are such errors that this court should set aside his conviction:

A. The evidence of Postmaster Delgado, of Yauco to the following question of the United States attorney:

"Question. On or about the 24th day of March last, state what, if any, registered packages containing money were forwarded from Yauco post-office?"

This was objected to by defendant, the objection overruled, and the witness testified concerning same (Case, pages 22 to 28).

B. The evidence of the witness Hutton was received by the court under defendant's objection.

The part excepted to commences with the question:

"Question. How did you happen to turn that money over to those gentlemen (McLeod and Landis)?" (Found on page 55 of Case, and extends to page 58.)

C. The evidence of the witness McLeod was objected to by defendant, and commences on page 59 of Case, from the beginning of his evidence, and down to bottom of page 60.

D. The evidence of the witness Landis was objected to by the defendant, commencing with the assertion of the United States attorney:

"DISTRICT ATTORNEY: I will introduce into evidence first the package entire and then the contents" (Case, page 62, and ending with his direct examination on that page).

E. The United States, at the close of Landis' evidence, rested, and the defendant then and there moved for a direction of a verdict of "not guilty."

The judge denied the motion.

The grounds of the motion were:

"Mr. CROWLEY: May it please the court, I ask the court now, at the close of the Government's case, to direct a verdict of 'not guilty' upon the following grounds:

First. That the indictment, in each and every one of its three counts is defective, upon the ground that it does not

allege, in any one of the three counts, that a letter or package or contents of a letter or package were placed in a post-office of the United States at any place or at any time.

Second. In no one of the counts is it alleged that this property, this letter or package or contents of letter or package, came into the mails of the United States at any particular place or at any particular time.

Third. The indictment does not, by name, specify the postmaster to whom the letter or package was addressed. It simply alleges that it was intended to be conveyed by mail to the postmaster at San Juan.

Fourth. There is no evidence of the existence of the national banks or that any of the bank notes were issued by any national bank.

Fifth. There is no evidence in the case that this letter or package was not delivered to the postmaster at San Juan, as charged in the indictment.

Sixth. There is a variance between the indictment and the proof.

Seventh. The court is without jurisdiction, there being no law for a term of this court commencing May 13, 1901, at Ponce" (Case, page 63).

The court denied the motion.

AFTER VERDICT.

F. The jury, on the case being submitted to it, rendered a verdict of "guilty as charged in the indictment" (Case, pages 77–78).

The defendant then moved, in writing, in arrest of sentence and judgment (Case, page 78; see pages 12–13 for grounds of motion).

G. No formal judgment appears to have been entered upon the verdict and sentence of the court.

The foregoing statement of the case presents substantially the questions involved and the manner in which they are raised.

Specification of Errors.

The following is a specification of the errors relied upon and intended to be urged and brought up by the writ of error herein:

First.

That said court erred in the drawing, impaneling, and formation of the grand jury impaneled at San Juan, in said district, at and for the April term, 1901, of said court, at which term and by which pretended grand jury the indictment herein against said defendant was found and presented and filed in this court, and upon which indictment this defendant has been tried and convicted, and that said court further erred in overruling the objections and demurrers of defendant to the drawing, organization, and impaneling of said pretended grand jury, and further erred in refusing to hear and investigate the objections of defendant to the drawing, organization, and impaneling of said grand jury, and to the legal qualifications and competency of certain persons named by defendant in said court to sit and act as grand jurors in and for said district of Porto Rico at said term of court.

That said grand jury was illegal and its acts and proceedings in this defendant's case were null and void.

Second.

That said court erred in overruling the demurrers interposed by this defendant to the indictment filed in this cause, and to each count thereof, and by holding and deciding that the facts and allegations stated in said indictment were sufficient in fact and law to put this defendant upon his plea of

not guilty, and by overruling all defendant's objections to the sufficiency of said indictment and its counts before pleading not guilty to the same, and also upon the trial of this defendant thereon at the May term, 1901, of this court.

Third.

That said court erred upon said trial at the close of the case and evidence on the part of the United States in refusing to direct a verdict of acquittal of defendant upon the various grounds stated by said defendant upon his motion for such direction, and particularly on the ground that said indictment, nor any of its counts, did not contain any averment of the deposit and mailing of the letter mentioned therein in any post-office of the United States or place for the deposit of mail matter; nor did the second count of said indictment contain any allegation that said letter had not been delivered to the person to whom it was addressed; nor was there any evidence at the close of the case on the part of the United States that said letter had not been delivered to the person to whom it was addressed.

Fourth.

The court erred upon said trial in receiving evidence offered by the United States, to which this defendant objected, and in overruling defendant's objections thereto, and also erred in refusing to receive evidence offered by this defendant, all of which appears in the case and exceptions filed herein.

Fifth.

The court erred in rendering judgment against the defendant in said cause upon the indictment and evidence, and said judgment is contrary to the law and to the facts.

Sixth.

The court erred in this cause in exercising jurisdiction over this defendant in his trial upon said indictment and in overruling defendant's plea to the jurisdiction of said court upon the ground that there was not any power or authority in law for the holding of said court at Ponce, in said district of Porto Rico, at the time at which defendant was tried and said judgment rendered, and commencing May 13, 1901, and all its proceedings against the defendant at said alleged regular term were and are null and void (Case, pages 86, 87, 88).

And, further, there is no evidence that said letter or package No. 171 ever arrived at the Ponce post-office, nor is there any evidence in the case that the same was not received by the postmaster at San Juan.

Facts of the Case.

The defendant was appointed to the military postal service in Porto Rico by Postmaster General Smith in September, 1898. He was then twenty-six years old and lived with his parents at Lockport, New York.

He continued in such service until March 24, 1901, when, under appointment from the Postmaster General, he was appointed to Buffalo, New York, in connection with the postal service for the Pan-American Exposition (Case, pages 44, 45, 46, 47–68).

While in Porto Rico, as the exigencies of the service required, he was acting postmaster at Playa Ponce, the port of the place where this offense is alleged to have been committed, for eleven months; then acting postmaster at Coamo for five months; then acting postmaster at Arecibo for one year, and postal clerk at Ponce for thirty days (Case, page 70).

Yauco was a post-office of the United States in March, 1901. It is about thirty (30) miles west of Ponce and is connected with it by railroad and with intermediate stations and post-offices between Yauco and Ponce.

On March 23 and 24, 1901, one Rafael Delgado was the postmaster at Yauco, and his only assistant was his brother, Antonio Delgado, a boy then fifteen or sixteen years old (Case, pages 23–28).

These two were the only persons connected with the Yauco post-office. The postmaster says that Saturday afternoon of March 23, 1901, he prepared a registered letter containing money-order funds, in checks, gold, and bills, amounting to $377, and numbered it 171 and addressed it "Postmaster, San Juan" (Case, pages 23–24).

He says there were three registered packages in his office the afternoon of March 23, Nos. 169, 170, and 171, originating in Yauco, and that three others came in the morning of March 24 from the western mail (numbered presumably) 168, 605, 606 (Case, pages 28–29–26).

In his cross-examination he describes what he did, and how, and that when he finished 171 in the afternoon of March 23 and put it in the safe "I did not seal the big envelope" (Case, page 28). The "big envelope" contained the smaller one containing the checks, gold coin, and bills (Case, page 29).

This remittance letter specified four checks aggregating $150; three ten-dollar bills, six five-dollar bills, forty-two one-dollar bills, twelve ten-dollar gold pieces, and one five-dollar gold piece, bills and gold aggregating $227, and in checks, bills, and gold pieces aggregating $377.

The printed and written part of the remittance letter was wholly in English. The subscribing witness to it, one Salvador Amil, did not understand English, and the postmaster translated it to him (Case, page 32).

The train carrying the mail the morning of March 24 left Yauco at 6.45 (Case, page 28), and arrived at Ponce about 8

a. m., or a few minutes later. The mail was delivered to Janitor Stephens at the Ponce post-office about 8.15 a. m. (Case, page 33). He received the mail from Yauco from the carrier, and just then the defendant came in. Stephens opened the mail and dumped the registers on a table, and defendant took them and locked them in a box. Defendant staid in the office about ten minutes and then left (Case, pages 33–34).

Stephens never saw letter 171 (Case, page 34).

Skinner, the assistant postmaster at Ponce and registry clerk March 24, discovered that package 171 was not among the registry matter, nor in the Ponce office, about 12.30 of that day (Case, page 37).

He marked out of the card, which is a package receipt for the articles named on it, the No. 171 (Case, page 37); says he never saw registered package No. 171 (Case, page 38).

Salicrup, clerk in the Ponce office, went to the office about 11 a. m.; took registers out of box, which was locked, and staid there, off and on, until about 4 p. m.; says he never saw package 171 (Case, page 39).

The defendant in his statement to Mr. Smith, made on March 29 and being "Exhibit F" for the United States, says he went to the post-office about between 11 and 12 a. m. and got three letters there for him; that Stephens and Salicrup were then in the office (Case, page 80).

Mr. Lee, a witness for the United States, saw the defendant about 6.45 p. m., March 24; that there was some talk about money, but couldn't tell anything about the amount; that the defendant showed some money; could not say how much he had; he had some bills and some gold; that a Mr. Kahrman and Mr. Chalk were present (Case, pages 44–45).

Mr. Kahrman, a witness for the United States, testified that he saw defendant about 6 p. m., March 24, and that Lee and Chalk were present; that defendant pulled money out of his pocket and counted it out on the table; that he could not state exactly the amount, but it was about $175—somewhere near that; the money was in bills and in gold; that

he could not state how much was in gold; thought there was sixty or seventy dollars in gold, but was not quite sure (Case, pages 45–46).

That Chalk was sitting alongside defendant and could see them better than he could; that he, witness, was sitting on the opposite side of the table (Case, page 48).

Then Mr. Smith was called as a witness, a United States post-office inspector. His evidence is lengthy and will be referred to and discussed in the assignment of errors herein.

Then Isaac Goldsmith, or Goldstein, was sworn, and says: That on March 25 or 26—but don't remember the exact date—the defendant left an envelope with him to deliver to Mr. Hutton. It was not addressed, but was in blank. He delivered it to Hutton the following day. He put the envelope in the cash drawer, and the drawer was not locked, only night-times. The other people, the other employés, of the establishment had access during the day to that drawer and during every day. He is not able to say whether the envelope he gave Hutton on the next day was the identical envelope the defendant left with him (Case, page 54).

From the record it does not appear whether or not the envelope was sealed up or fastened. Mr. Hutton testified that on March 26 he received from Goldsmith an envelope which Goldsmith told him came from the defendant. It was unaddressed. It contained money—$70, as he remembers: were two ten-dollar gold pieces and the balance in bills, some five and ten dollar bills; kept the money in his possession a few days; part of it he spent, and part of it he turned over to Mr. McLeod and Mr. Landis (Case, page 55).

The witness was then permitted by the court, against the defendant's objections, to state the talks and transactions between himself and Messrs. McLeod and Landis. They will be referred to and discussed in the assignment of errors hereafter.

In the money delivered by Hutton to McLeod and Landis, being "Exhibit G" (Case, page 62), the district attorney stated

and claims that the bills in series and numbers correspond with the Yauco letter of remittance and the indictment herein.

The court will see that in part at least that is not true.

It was received in evidence under defendant's objections.

The United States district attorney was then permitted to reopen the case to show whether or not letter 171 was delivered or received at the San Juan post-office.

He called Postmaster Landis, who, being asked if he received, as postmaster at San Juan, a registered package issued from the Yauco post-office on March 23 last and numbered R. P. E. No. 171, said he could not tell. He was the only witness called and this was the only evidence on that point.

The United States then again closed its case (Case, pages 64–65).

The defendant than gave some evidence as to where he was and what he did on March 24 (Case, pages 68 to 69).

Among others he called W. P. Chalk, the person before spoken of. He was with defendant from about 1.30 p. m. until he left Ponce on the mail coach. He was present with Lee and Kahrman and the defendant that afternoon. He does not corroborate Kahrman. That he spent some time with the defendant on Saturday evening, March 23, and that some gold was changed, but he did not know how much.

The defendant called William Houghtaling, clerk in the auditor's office for the island of Porto Rico for two years. Knew the defendant since July, 1898. Stated positions defendant had held in postal service while in Porto Rico. The defendant offered to show that about $200,000 had been received, disbursed, and accounted for in such position without a cent's loss or discrepancy, and that all his reports as such official were regularly and promptly made.

The court excluded the money part of the offer (Case, pages 69–71).

That he had known defendant's reputation since July, 1899; that for integrity, from the speech of people on the island, it was good.

The defendant then recalled Mr. Miller, postmaster at Ponce, who had known the defendant since June 8, 1899; knew his reputation for honesty and integrity in Ponce, from the speech of people, and it was good (Case, page 70).

The defendant was then sworn as a witness in his own behalf (Case, pages 70–71).

Says he never saw the package in question and did not take it; states how long he has been in the postal service, and where and in what capacity.

The statements, "Exhibits E & F," which the defendant made at Mr. Smith's request, were put in evidence by the United States attorney (Case, pages 80–83).

First Assignment of Error.

First.

That said court erred in the drawing, impaneling, and formation of the grand jury impaneled at said court at San Juan, in said district, at and for the April term, 1901, at which term and by which pretended grand jury the indictment herein against said defendant was found and presented and filed in said court, and upon which indictment this defendant has been tried and convicted, and that said court further erred in overruling the pleas, objections, and demurrers of defendant to the drawing, organization, and impaneling of said pretended grand jury, and further erred in refusing to hear and investigate the objections of defendant to the drawing, organization, and impaneling of said grand jury, and to the legal qualifications and competency of certain persons named by the defendant in his plea in abatement in said court to sit and act as grand jurors in and for said district of Porto Rico at said term of court.

That said grand jury was illegal and its acts and proceedings in this defendant's case were null and void.

The defendant pleaded in abatement to said indictment, and the United States attorney demurred to said plea (Case, pages 3, 4, 5, 6).

Under the general rules governing pleadings, a demurrer interposed to the plea in abatement admits the allegations in such plea to be facts. It was therefore not necessary to offer to prove the truth of the facts alleged in said plea. Under the decision of the court sustaining the demurrer, the judge would not have heard them.

The question then arises, was the plea sufficient in form and substance, and were the allegations thereof, in case the demurrer was overruled and an answer interposed, and the facts admitted by the demurrer proven, such as to disqualify the persons therein named from sitting and acting as grand jurors?

If these questions are answered in the affirmative, then the indictment herein is void and of no effect.

First. The plea specifically names such disqualified persons.

Second. It states the grounds of such disqualifications.

Third. It states how the additional persons were summoned.

Fourth. It states the legal qualifications of jurors under the act of the Legislative Assembly of Porto Rico.

Fifth. It states those summoned who were not publicly drawn from the box containing names as required by the act of the Congress of the United States, dated June 30, 1879, and that the names of such jurors were not in such box.

Sixth. That no writs of *venire facias* were directed as to said last-named persons from the clerk's office of said district

court, or by his deputy, nor returned in the manner prescribed by section 803 of the Revised Statutes of the United States.

Seventh. That he, the defendant, was not present in court at the time of the selection, summoning, and impaneling of said jury and had no opportunity to make any challenge to the same, or to the members thereof, because he did not know of said action and was not at that time represented by counsel, but had that day (April 13, 1901) learned of the aforesaid acts for the first time, and therefore immediately presented said plea; that said plea, in substance, alleged that he had been and would be greatly prejudiced by such illegal and improper selection and impaneling of such grand jury, as it was composed, as aforesaid, of persons so as aforesaid disqualified to act, and it concludes with a prayer, praying judgment that the said indictment be dismissed and quashed.

Eighth. It was duly verified.

As before stated, by the ruling of the court the defendant was prevented from giving or making evidence of the allegations of his plea, but the demurrer admits such allegations to be facts, and it is therefore unnecessary to consider what the practice or procedure should have been in case the demurrer was overruled and an answer interposed and evidence taken as to the truth of such allegations.

The plea was, in substance, in proper form and sufficient on its face.

The only grounds of demurrer were:

First. That the plea set forth matters immaterial to the validity of the indictment.

Second. That the matters set forth, even if true, constitute no reason why defendant should not be required to plead in bar thereof.

Third. That the matters set forth, in so far as the same control or are applicable to the procedure of this court in the summoning and impaneling of a grand jury, show no illegality therein.

Fourth. Because of other good and sufficient reasons apparent on the face of said plea.

The judge in his order, opinion, or judgment held:

ORDER.

"The plea in abatement questions the regularity of the organization of the grand jury that found the indictment.

Of the twenty persons drawn and summoned, twelve appeared and were, as shown by the record, placed in the box in making up the necessary panel of sixteen, and as four were lacking, the court directed the marshal to summon four persons from the body of the district to supply the deficiency, and the marshal presented four men and they were placed in the box with the other twelve, making the required number.

It was not required, in my opinion, that names should be drawn from the jury-box to supply this deficiency. To thus construe the law would render it burdensome, expensive and impracticable, and it is evident this was not the legislative intent.

United States *vs.* Eagan, 30th Fed. Rep., 608.

The jury law recently enacted by the Legislative Assembly of Porto Rico appears to make no provisions for a grand jury; but in any event it did not take effect until April 1, 1901, and the record shows the venire of grand jurymen for this term was executed and they summoned prior to that date.

Moreover, the court is by no means satisfied that that law admits of application to the proceedings of this court.

Mere irregularities in the formation of a grand jury do not invalidate its action, but there seems to have been none in this instance. The persons composing the grand jury were examined touching their qualifications and were qualified according to the rule prescribed by this court.

The demurrer to the plea is sustained and the plea overruled."

Had the defendant not interposed his plea in abatement, but pleaded "not guilty" only, he could not have saved his rights.

The defects set forth in the plea did not appear on the face of the indictment, and a plea in abatement was the only way of raising and presenting such defects.

The facts were extrinsic to the indictment or record.

It was necessary to plead in abatement, because a plea in bar would estop the defendant by an issue. The proper time to plead in abatement is before a plea in bar or "not guilty."

This rule is well settled in England and the United States.

Chitty's Criminal Law, pages 445, 446, 447.

If a grand juror is disqualified, he may be challenged by the defendant before the bill is presented, and if it be discovered after the finding, the defendant may plead it in avoidance (*Ib.*, page 307).

The plea, under the English practice, should be verified by affidavit that it is true (*Ib.*, page 448), and should pray for judgment (*Ib.*, page 448).

The plea in this case was verified, and demanded judgment that the indictment be dismissed and quashed.

The objection that unqualified persons were placed upon the grand jury by which the indictment was found may be raised by the defendant by a plea in abatement. The sufficiency of such plea in the Federal courts, in the absence of

legislation by Congress, must be decided by the principles of the common law.

United States *vs.* Williams, 1 Dillon, 485.
See also United States *vs.* Hammond, 2 Woods, 197; S. P., 1878.
United States *vs.* Reeves, 3 Woods, 199.

Prejudice to the defendant must be alleged.
United States *vs.* Turka, 14 Blatchford, 5.

The summoning and impaneling of the lacking persons to constitute the requisite number to form a legal grand jury was not done as required by the act of Congress of June 30, 1879 (21 Stat. L., 43), nor even as required by rule 37 of said United States district court of Porto Rico.

The reason assigned by Judge Holt in his opinion and order sustaining said demurrer, to wit, that the act of the Legislative Assembly of Porto Rico did not take effect until April 1, 1901, is without merit.

The act was in effect when said grand jury was formed, on April 8, 1901, and also when said lacking persons were placed on said grand jury, and when said indictment was presented, on April 10, 1901, and when said plea was interposed, on April 13, 1901. The act of Congress of June 30, 1879, and sections of the United States Revised Statutes relating to grand juries and grand jurors were in force.

The case of The United States *vs.* Egan, 30 Fed. R., 608, cited by Judge Holt as authority for his action, was a case arising in the circuit court, E. D. Missouri, in 1887, and simply holds:

That there being no Federal statute regulating challenges to grand jurors, the Federal courts may, under the Revised Statutes of the United States, section 722, follow the practice of the courts of the State in which they are held, with reference to the objections to indictments presented by a grand jury on the ground of irregularity in the method of selecting

the members of the grand jury. That the statutes of Missouri being merely directory, objections to the manner of drawing the members of the grand jury cannot be raised by a plea in abatement to an indictment presented by it, when it appears that the jurors irregularly chosen were competent and qualified jurors, residing in the district, and that the only irregularity consisted in the method of selecting them.

The plea in abatement in that case affected only the regularity in drawing the grand jurors, and was not one affecting the qualifications of the jurors.

The judge may be strictly accurate when he states that the marshal was directed to summon four men to supply the deficiency, and said marshal presented four men and they were placed in the box from the body of the district; but in fact the marshal went out of the court-room into the city of San Juan and returned in a few minutes bringing in three of the persons named in said plea, Frank Antonsanti, Hugo Stern, and William Bowen, and then, one more being lacking, the marshal placed W. H. Holt, Jr. (the judge's son), in the box, he being at the time a bystander in said court.

Section 800 of the Revised Statutes of the United States empowers the United States courts, by rule or order, to conform the designation and empaneling of juries in substance to the laws and usages relating to jurors in the State courts.

By section 808 of the United States Revised Statutes, hereinafter quoted, it is, among other things, provided:

"And whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order (that is from the body of the district and not from the bystanders) to the marshal to summon a sufficient number of jurors for that purpose."

The judge further states in his opinion and order that "the persons composing the grand jury were examined

touching their qualifications and were qualified according to the rules prescribed by this court" (being rule 38).

It is respectfully submitted that there is no law of Congress or of the Legislative Assembly of Porto Rico giving said judge the right to prescribe by rule the qualifications of grand jurors or petit jurors.

The laws of Congress relating to grand and petit jurors to serve in the courts of the United States, in each State respectively, their qualifications, how summoned, designated, formed of how many to consist, etc., are contained in the following sections of the Revised Statutes of the United States and the act of June 30, 1879 (21 Stat. L., 43):

"SECTION 800. Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned; and they shall be designated by ballot, lot, or otherwise, according to the mode of forming such juries then practiced in such State court, so far as such may be practicable by the courts of the United States or the officers thereof. And for this purpose the said courts may, by rule or order, conform the designation and impaneling of juries, in substance, to the laws and usages relating to jurors in the State courts, from time to time in force in such States."

"SECTION 803. Writs of *venire facias*, when directed by the court, shall issue from the clerk's office, and shall be served and returned by the marshal in person, or by his deputy; or, in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as may be specially appointed for that purpose by the court, who shall administer to him an oath that he will truly and impartially serve and return the writ."

"SECTION 808. Every grand jury empaneled before any district or circuit court shall consist of not less than sixteen nor more than twenty-three persons. If of the persons summoned, less than sixteen attend they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose."

Chitty's Cr. L., 250, original paging 305.

2 Black., 301, *et seq.*

"SECTION 812. No person shall be summoned as a juror in any circuit or district court more than once in two years, and it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned and attended said court as a juror at any term of said court held within two years prior to the time of such challenge."

"SECTION 2. That the *per diem* pay of each juror, grand or petit, in any court of the United States, shall be two dollars:

And that the last clause of section eight hundred of the Revised Statutes of the United States, which refers to the State of Pennsylvania, and sections eight hundred and one, eight hundred and twenty, and eight hundred and twenty-one of the Revised Statutes of the United States, are hereby repealed.

And that all such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in section eight hundred of the Revised Statutes, which names shall have been placed

therein by the clerk of such court and a commissioner, to be appointed by the judge thereof, which commissioner shall be a citizen of good standing, residing in the district in which said court is held, and a well known member of the principal political party in the district in which the court is held opposing that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations, until the whole number required shall be placed therein.

But nothing herein contained shall be construed to prevent any judge from ordering the names of jurors to be drawn from the boxes used by the State authorities in selecting jurors in the highest courts of the State;

And no person shall serve as a petit juror more than one term in any one year, and all juries to serve in courts after the passage of this act shall be drawn in conformity herewith;

Provided, That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States on account of race, color, or previous condition of servitude."

Act June 30, 1879, 21 Stat. L., 43.

See also sections of the United States Revised Statutes, 809, 810, 811.

The island of Porto Rico was ceded by Spain to the United States by the treaty of Paris, ratified and proclaimed April 11, 1899.

By the last clause of article 9 of that treaty it is provided that—

"The civil rights and political status of the native inhabitants of the territory hereby ceded to the United States shall be determined by the Congress."

Pursuant to this power Congress, by the so-called Foraker act, approved April 12, 1900, and to take effect May 1, 1900, entitled, "An act temporarily to provide revenues and a civil government for Porto Rico and for other purposes," the provisions of which, so far as they may relate to the case at bar, provided as follows:

By section 7, that the inhabitants of Porto Rico, specified in that section—

"Shall continue a body politic under the name of the people of Porto Rico, with governmental powers as heretofore conferred, and with power to sue and be sued as such."

By section 8:

"That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended or repealed by the legislative authority hereinafter provided for Porto Rico or by act of Congress of the United States:" * * *

By sections 14, 15, and 16.

"SECTION 14. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico."

"SECTION 15. That the legislative authority hereinafter provided shall have power by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this act, as it may from time to time see fit."

"SECTION 16. That all judicial process shall rule in the name of 'United States of America, *ss:* The President of the United States,' and all criminal or penal prosecutions in the local courts shall be conducted in the name and by the authority of 'The People of Porto Rico;' and all officials authorized by this act shall before entering upon the duties of their respective offices take an oath to support the Constitution of the United States and the laws of Porto Rico."

By section 27:

"SECTION 27. That all local legislative powers hereby granted shall be vested in a Legislative Assembly which shall consist of two houses: one the executive council, as hereinbefore constituted, and the other a house of delegates, to consist of thirty-five members elected biennially by the qualified voters as hereinafter provided; and the two houses thus constituted shall be designated 'The Legislative Assembly of Porto Rico.'"

"SECTION 34. That Porto Rico shall constitute a judicial district to be called 'The district of Porto Rico.' The President, by and with the advice and consent of the Senate, shall appoint a district judge, a district attorney, and a marshal for said district, each for a term of four years unless sooner removed by the President. The district court for said district shall be called the district court of the United States for Porto Rico and shall have power to appoint all necessary officials and assistants, including a clerk, an interpreter, and such commissioners as may be necessary, who shall have like power and duties as are exercised and performed by commissioners of the circuit courts of the United States, and shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States, and shall proceed therein in the same manner as a circuit court. The laws of the United States relating to appeals, writs of error and cer-

tiorari, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. Regular terms of said court shall be held at San Juan, commencing on the second Monday in April and October of each year, and also at Ponce on the second Monday in January of each year, and special terms may be held at Mayaguez at such other stated times as such judge may deem expedient. All pleadings and proceedings in said court shall be conducted in the English language.

The United States district court hereby established shall be the successor to the United States provisional court established by general orders, numbered eighty-eight, promulgated by Brigadier General Davis, United States Volunteers, and shall take possession of all records of that court, and take jurisdiction of all cases and proceedings pending therein, and said United States provisional court is hereby discontinued.

"SECTION 35. That writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied; and the supreme and district courts of Porto Rico and the respective judges thereof may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the district and circuit courts of the United States. All such proceedings in the Supreme Court of the United States shall be conducted in the English language."

The Legislative Assembly of Porto Rico, by act approved January 31, 1901, and which went into effect April 1, 1901, and entitled "An act concerning procedure in jury trials," and containing one hundred and sixty (160) sections, legislated concerning the qualifications of jurors in the territorial courts of the island.

The only sections of the act touching the case at bar are sections one, two, three, and four (1, 2, 3, and 4), which read as follows:

SECTION 1. A jury is a body of men selected from the citizens of a particular district, and invested with power to try questions of fact.

SECTION 2. A jury shall consist of twelve men who must unanimously concur in any verdict rendered.

QUALIFICATIONS OF JURORS.

SECTION 3. A person is competent to act as a juror if he be:

1. A male citizen of the United States or of Porto Rico of the age of twenty-one and not more than sixty years, who shall have been a resident of the island one year and of the district or county ninety days before being selected and returned.

2. In possession of his natural faculties and of ordinary intelligence and not decrepit.

3. Possessed of sufficient knowledge of the Spanish language.

4. Assessed on the last assessment-roll of the district or county on property of the value of at least two hundred dollars belonging to him.

SECTION 4. A person is not competent to act as a juror:

1. Who does not possess the qualifications prescribed by the preceding section, or

2. Who has been convicted of malfeasance of office or any felony or other high crime."

The act also provides for selecting, drawing, summoning, and challenging persons selected under its provisions.

The alleged grand jury in this case consisted of only sixteen persons, all told.

If any one of the sixteen was disqualified, then the indictment is void.

This was so at common law. An alien is not competent as a grand juror in Porto Rico, and was not and is not competent at common law.

"It is perfectly clear that all persons serving upon the grand inquest must be good and lawful men; by which it is intended, that they must be liege subjects of the king, and neither aliens (?); nor persons outlawed even in a civil action (?); attainted of any treason or felony; or convicted of any species of *crimen falsi*, as conspiracy or perjury, which may render them infamous (?). And if a man who lies under any of these disqualifications be returned, he may be challenged by the prisoner before the bill is presented (M); or, if it be discovered after the finding, the defendant may plead it in avoidance, and answer over to the felony; for which last purpose he may be allowed the assistance of counsel, on producing in court the record of the outlawry, attainder, or conviction, on which the incompetence of the juryman rests (A). This necessity for the grand inquest to consist of men free from all objections existed at common law, and was affirmed by the Statute 11 Hen. IV, c. 9, which enacts, that any indictment taken by a jury, one of whom is unqualified, shall be altogether void and of no effect whatsoever."

1 Chitty's Cr. Law, original page 307.

Under section 1 of the legislative act aforesaid, the persons selected for juries must be drawn from the "citizens" of said district.

So also section 4 requires jurors to be "citizens" of the United States or of Porto Rico.

The plea in abatement alleges that "Manuel Andino" was one of said sixteen grand jurors, and that he "was at the time * * * a citizen of the Republic of Venezuela" (Case, page 4).

If so, he was disqualified and the indictment is void.

That William H. Holt, Jr., had not at that time been a resident of Porto Rico for one year.

That Antonio Blanco, Manuel Andino (an alleged alien), Miguel Olmedo, Charles H. Post, Frank Antonsanti (alias Frank Santo, alias Antonio Santi), W. H. Holt, Jr., and William Bowen were not, nor was any one of them, assessed on the last assessment-roll of the district, county, or island of Porto Rico, on property of the value at least of two hundred dollars ($200).

That the four talesmen so drawn and serving on said alleged grand jury were not, nor was any one of them, publicly drawn from the box, containing at the time of drawing 300 names possessing the qualifications prescribed in section 800 of the United States Revised Statutes, and which names had not been placed therein by the clerk of the United States district court and a jury commissioner, as prescribed by the aforesaid act of June 30, 1879, and that no writs of *venire facias* were directed by the clerk against such persons nor returned as prescribed by section 803 of the United States Revised Statutes.

This territorial act contains the only provisions of territorial law of the island of Porto Rico defining the qualifications of jurors.

Prior to the cession of the island by Spain to the United States there was no law defining the qualifications of or relating to grand juries or grand jurors in the island.

Does this act relate to and prescribe the qualifications of grand jurors?

If not, then the only provisions of law in existence in the island on that subject and relating to grand juries and grand jurors in the United States district court are contained in

the provisions of the sections of the United States Revised Statutes hereinbefore cited and the act of Congress passed June 30, 1879.

Article V of the amendments to the Constitution of the United States provides that—

"No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a grand jury."

Felony, with which the defendant is charged, is an "infamous crime;" so, to put a person on trial in the courts of the United States for an infamous crime, there must be an indictment by a grand jury found against him.

This applies to all courts of the United States within the territorial limits of the United States.

The Foraker act is silent as to grand juries and the qualifications of grand jurors except so far as said section 14 and its other sections may refer to and extend to grand juries and jurors in the United States district court for Porto Rico.

There is nothing in the said Porto Rican act which in express terms refers to grand juries.

Section 14 of the Foraker act, however, which provides that statutory laws of the United States shall have the same force and effect "in Porto Rico as in the United States," subject to the limitations therein specified, in my opinion extends such statutory laws relating to grand juries and grand jurors to Porto Rico.

Territorial courts are the creations of the Congress, and power to create such courts is vested in Congress, and is found in subdivision 9 of section 8 of article 1 of the Constitution of the United States, which reads:

"SECTION 8. The Congress shall have power * * * to constitute tribunals inferior to the Supreme Court."

And in subdivision 2 of section 3 of article 4, which reads:

"The Congress shall have power to dispose of and make

all needful rules and regulations respecting the territory or other property belonging to the United States."

This court has repeatedly held that the territories in respect to the powers to create such courts are not within section 1, article 3, of the Constitution, which reads:

"The judicial powers of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges both of the Supreme and inferior courts shall hold their offices during good behavior, etc."

Downes *vs.* Bidwell, 182 U. S., 244–270.

I know of no law of Porto Rico which provides for a grand jury.

The aforesaid act of the Legislative Assembly is the only law of Porto Rico defining the qualifications of jurors. If the qualifications of jurors therein prescribed do not apply to grand jurors, then we are thrown back upon the common law, the Constitution of the United States, and the sections of the United States Revised Statutes relating to grand juries and grand jurors, and said act of Congress of June 30, 1879, hereinbefore cited, so far as the same are applicable to Porto Rico under section 14 and the other sections of said Foraker act.

The qualifications of grand and petit jurors in the courts of the United States and in territorial courts created by Congress are prescribed in sections 800–812 and section 2 of the act of June 30, 1879 (21 Stat. L., 43).

I assume, also, that in accordance with the common law (Congress or the State or territorial law being silent) such jurors must be male citizens of the United States.

That an alien is disqualified.

That they must be inhabitants and residents of the district, county, State, or Territory for which they inquire.

That they must be of good character.

By the common law grand jurors must:

1. Be male subjects of Great Britain.

2. An alien was not qualified.

3. Must be of good character.

4. Must possess property qualifications.

5. Must be inhabitants of county for which they are sworn to inquire.

6. Must be twenty-one years of age.

1 Chitty's Cr. Law, original pages 305 to 310.

If Porto Rico has failed to provide for grand juries and the qualifications of grand jurors, and the sections of the United States Revised Statutes and the act of June 30, 1879, before cited, do not provide for the same, then under the fifth amendment to the Constitution of the United States, imperatively requiring an indictment by a grand jury for capital or infamous crimes committed within the territorial limits of the United States, has not the defendant been deprived of his liberty "without due process of law," required by section 1 of article 14 of the Constitution of the United States?

That reads:

" * * * nor shall any State deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws."

This court has held in Simon *vs.* Croft, 182 U. S., page 427, that—

"The essential elements of due process of law are notice and opportunity to defend."

But in the above condition the question arises, was there any process of law in defendant's case?

Was there any grand jury, any indictment; and did he, in his pretended trial, have any day in a legal term of court?

Further, as to pleas in abatement see:

Tarrance *vs.* Florida, 188 U. S., 519.
Smith *vs.* Mississippi, 162 U. S., 592.
Brownfield *vs.* South Carolina, 189 U. S., 427.
Clinton *vs.* Engelbrecht, 13 Wall., 437.

Second Assignment of Error.

"That said court erred in overruling the demurrers interposed by this defendant to the indictment filed in this cause, and to each count thereof, and by holding and deciding that the facts and allegations stated in said indictment were sufficient in fact and law to put this defendant upon his plea of not guilty, and by overruling all defendant's objections to the sufficiency of said indictment and its counts before pleading not guilty to the same, and also upon the trial of this defendant therein, at the May term, 1901, of this court."

The indictment contains three (3) counts.

Preceding the first count is a caption, which reads as follows:

"At a stated term of the district court of the United States within and for the district of Porto Rico begun and held in the court room of said court at the city of San Juan in said district on the second Monday in April being also the 8th day of the month, in the year of our Lord 1901 and in the 126th year of the Independence of the United States of America.

On the 10th day of said month and year, came the grand jury and returned a certain indictment which was filed and is as follows, to wit:

UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

In the District Court of the United States in and for the District Aforesaid, at the April Term Thereof, A. D. 1901."

A. It does not appear in the caption that the indictment was taken and found upon oath.

This should so appear.

1 Chitty's Cr. L., 267.

That count alleges that the defendant, March 24, 1901, was a person employed in a department of the postal service of the United States, to wit, a clerk in and for the post-office of the said United States at Ponce, within said district, and that a certain letter then directed and intended to be conveyed by mail to the postmaster of the United States at San Juan had then and there come into the defendant's possession as such clerk, and which letter contained gold coins, bank notes, United States notes, and bank checks amounting to $377, money and property of the United States, and that the defendant, then and there being so employed, did steal and take said contents to the value of $277 out of said letter, which letter had not then been delivered to said person to whom the same was directed.

B. This count does not state when such letter was mailed or deposited.

C. It does not state by whom it was mailed, nor where.

D. It does not allege that the letter was ever actually deposited in the mail, or in any post-office for mailing and delivery.

E. It does not describe the gold coin, bank notes, United States notes, and bank checks, or any one or more of them,

and an acquittal or conviction under it could not be pleaded in bar in another prosecution for want of certainty or lack of description of the articles alleged to have been taken out of said letter.

The Second Count of the indictment is open to all the objections stated against the first count except as to the description of certain of the bills alleged to have been in said letter, and is also further objected to as follows:

It does not appear on its face that it was found and presented upon oath, nor does it refer to the first or other counts to supply this omission.

In First Chitty Criminal Law, page 205, the doctrine on this point is held.

"The introduction of several counts, therefore, which merely describe the same transaction in different ways cannot be made the subject of objection for the defendant can either demur, apply to the court to relieve him or move in arrest of judgment.

It seems also to follow from these principles that every separate count should charge the defendant as if he had committed a distinct offense, because it is upon the principle of the joinder of offenses, that the joinder of counts is admitted; and to the supposed second or third offense in each count should be prefixed a statement that the jury *super sacramentum suum ulterius præsentant.*"

Each of the three counts of the indictment is separately signed by the district attorney (Case, pages 1, 2, 3).

The second count appears to be based upon section 5467 of the United States Revised Statutes, which section relates to the secreting, embezzling, or destroying any letter which contains any of the articles enumerated in said section, and also to the stealing or taking any of such enumerated articles out of such letter, and provided the same shall not have been delivered to the party to whom it is directed, and

the punishment is imprisonment at hard labor for not less than one year nor more than five years.

The first part of the section relates only to the letter, while the latter part of the section relates to stealing the contents of such letter.

On the back of the indictment is the endorsement that the indictment is for "Violation of sec. 5467, R. S., etc." (Case, page 3).

In the commitment of defendant after conviction it appears as follows: "The defendant Harold Crowley, having been tried and found guilty as charged in said indictment for embezzlement a violation of section 5467 of the Revised Statutes of the United States" (Case, page 11).

From the endorsement on the indictment and in the order of commitment, from the language of this count and from the sentence, it may be said that the indictment is founded on an alleged violation of section 5467.

If so, that count is fatally defective because of the omission therefrom of the statutory words and statutory requirement, to wit:

"And provided the same shall not have been delivered to the party to whom it is directed."

In an indictment under that section it is absolutely necessary to allege that fact and also to prove it.

Where the offense is statutory the language of the statute must be followed in words or in substance.

The Third Count cannot have been drawn under section 3891 for two reasons: That section does not, in terms at least, refer to persons in the postal service, nor does it require that the letter shall not have been delivered to the party to whom it is directed.

This third count contains both these allegations, to wit: clerk in postal service, and that the letter had not been delivered, etc.

Nor can it have been drawn under section 5469, which relates to persons not in the postal service.

It is defective in this:

It does not allege depositing and mailing in any post-office or branch post-office "established by authority of the Postmaster General, or in any other authorized depository for mail matter, or in charge of any postmaster, assistant clerk, carrier, agent, or messenger employed in any department of the postal service, shall be evidence that the same was 'intended to be conveyed by mail' within the meaning of the two preceding sections," nor the time of mailing.

It does not describe the money and other articles of value therein alleged to be contained nor the ownership thereof.

It does not give the date of such letter nor by whom written; only that it was sent by one Rafael Delgado.

It is vague and indefinite.

For the foregoing reasons it is submitted that the district court erred in overruling the demurrers interposed by the defendant to the indictment herein and to each count thereof.

Section 1025 of the United States Revised Statutes does not help the United States in this case.

That section provides that no indictment found and presented by a grand jury in any district or circuit court of the United States shall be deemed insufficient, nor shall the trial judgment or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

Here the objections to the indictment were not to defect or matter of form.

They were for the omission of necessary and material allegations, as stated in the foregoing objections.

THIRD ASSIGNMENT OF ERROR.

That said court erred upon said trial at the close of the case and evidence on the part of the United States in refusing to direct a verdict of acquittal of defendant upon the various grounds stated by said defendant upon his motion for such direction, and particularly on the ground that said indictment, nor any of its counts, did not contain any averment of the deposit and mailing of the letter mentioned therein in any post-office of the United States or place for the deposit of mail matter, nor did the second count of said indictment contain any allegation that said letter had not been delivered to the person to whom it was addressed, nor was there any evidence at the close of the case on the part of the United States that said letter had not been delivered to the person to whom it was addressed.

At the close of the evidence on the part of the United States, the court should have granted defendant's motion to direct a verdict of acquittal.

Two of the assigned grounds for such motion alone were sufficient.

That the second count is fatally defective in that it does not allege that it was presented upon the oaths of any grand jury, and further that it does not allege that the letter therein mentioned had not been delivered to the party to whom it was directed.

Further, there is no evidence in the case that this letter or package was not delivered to the postmaster at San Juan (Case, page 63).

Then the district attorney asked the court to permit him to reopen the case on the part of the United States to show whether or not the letter was ever delivered to the postmaster at San Juan.

The court permitted him to do so, and he recalled Mr. Landis, then postmaster at San Juan, and before and since

March, 1901, and failed to show by him whether or not the letter had been delivered at the post-office at San Juan. The postmaster stated why he could not tell or answer the question.

No one else was called on that point, although others might have been called (Case, pages 64–65).

The United States then rested its case, and that fact remained unproven (Case, page 65).

The failure and refusal of the court to grant defendant's motion on the stated grounds was error.

The requirement of omitted allegation was statutory, and its allegation in the indictment absolutely necessary, and its proof was indispensable.

Without its establishment, the case of the United States was not made out, and there was nothing to put the defendant on his defense.

There was no evidence whatever on this point.

Fourth Assignment of Error.

The court erred upon said trial in receiving evidence offered by the United States to which this defendant objected and in overruling defendant's objections thereto, and also erred in refusing to receive evidence offered by this defendant, all of which appears in the case and exceptions filed therein.

The evidence of the United States witnesses, McLeod and Mr. Landis, was in part improper and incompetent. To understand this it is necessary to refer to the evidence of Mr. Smith. He testifies:

"I asked him (the defendant) what was the package he had left for Mr. Hutton the night he and I left for Ponce. He said, 'A note and money.' I asked him if Mr. Hutton had returned it to him and he said, No. I asked him then if he would object to going to Mr. Hutton in my presence

and asking him for that money, and he said he would go. I said: No. I think I had better not go. I will send for it. I said later: 'You sit down at the desk and write a note to Mr. Hutton asking him to send that money you left with him by bearer. He said, Certainly, and he sat down at the desk and wrote the note and signed it. I handed it to my clerk, Mr. McLeod, and told him to go to Mr. W. K. Landis, postmaster of San Juan, and ask him to go with him as a witness to Mr. Hutton as to the receipt of the money from Mr. Hutton, also to witness the money that Mr. Hutton gave him was the identical money which he was bringing to me. He went out and returned in about twenty minutes. Mr. Crowley remained there and Mr. McLeod returned with Mr. Landis. Mr. McLeod had a bundle of bills in his hands which he threw on my desk and I spread them out on the desk."

McLeod testified as follows:

John D. McLeod, called by the United States and sworn, testified:

My name is John D. McLeod. I am clerk in the office of the post-office inspector, San Juan. The chief inspector is Mr. Lawrence Letherman. The field inspector is Mr. A. A. Smith. I know Harold Crowley, the defendant. On March 28th last I was in the office at the same time that Crowley was. I was requested by Mr. Crowley to take a note to Mr. Hutton and to get some money that he asked for in the note. Mr. Crowley wrote the note. I could not say that I read it. I think I read part of it when he handed it to me. I did read the note. After the note had been written by instruction from Mr. Smith I asked Mr. Landis to accompany me, and I proceeded to find Mr. Hutton. We went to different places, and at last found him in a saloon on San Francisco street. I called him out and presented the note, and asked him to read it. He read the note, and as he did not seem to understand at first what was required, I took the note

from his hand and read it, and I said to him, "Mr. Crowley requests that money he left with you and wants you to give it to me and Mr. Landis." He said, "It is not here." I said, "Can you get it?" He said, "I do not think I could." I said, "Are you sure?" He said, "I might in half an hour."

Mr. DEXTER: I object to this statement as it cannot be competent. It is simply hearsay remarks made by Mr. Hutton. I object to it on the ground of its incompetency.

The COURT: This witness was the agent of the defendant sent by him to get certain things.

Mr. DEXTER: I believe that rule applies where the agent is for the purpose of obtaining information, but in this case he was sent to get a certain sum of money, and not to enter into any discussion with the party to whom he was sent.

The COURT: I think he was his agent as to that transaction. He was directed to carry out certain instructions. I will let you prove what he said.

Mr. DEXTER: Note an exception.

Witness, answering:

He said he could get it in probably a half an hour and would take it to the office. I told him that if it was just as convenient I would accompany him and he would get it there in my presence, and we then walked across the plaza to the Colonial Club restaurant and just as we went in he said to Mr. Goldsmith——

The COURT: Who said that?

Ans. Mr. Hutton said to Mr. Goldsmith: "Give me this money," and to me, "Do you want to go in and see Mr. Goldsmith?" I said: "I am not interested in Mr. Goldsmith. If you have the money I want it to take to Mr. Crowley." Just at that moment Mr. Goldstein stepped out of the door and I do not know whether it was my suggestion or Mr. Hutton's, but we stepped in and Mr. Hutton motioned to a table and we all three sat down; and as we sat down I said, "Well, are you going to get the money?" and he said, "I have it in my pocket." I said,

"How much?" and he said, "About fifty dollars." I said, "Is this the identical money left with you by Mr. Crowley?" and he said that it was. I looked at Mr. Landis to see if he understood the question and its import, and then I asked Mr. Hutton for the money and he reached in his pocket and got out a roll of bills and put them on the table and I counted out fifty dollars. I said, "Is this the original money left by Mr. Crowley with Mr. Goldsmith for you and have you any more?" and he said, "Yes, I have about four dollars more that I got in change over the bar in buying drinks." I said, "I do not want that money, but I want the original money." I told him I would give him a receipt for it and I took out a piece of paper and wrote a lead-pencil receipt. We then proceeded to the office of the post-office inspector. I carried the money in my left hand partly shut, just that way (demonstrating).

The denominations of the bills were two ten-dollar bills, one five-dollar bill and two ten-dollar gold pieces that I know of, as to the rest I cannot say. When I went back to the office I laid the money on the table in front of Mr. Smith. It was finally deposited with the postmaster of San Juan. A record was taken of the denominations of the bills; they were then placed in an envelope which was sealed with sealing wax and handed to the postmaster. The last I saw of it was the sealed envelope in the hands of the postmaster."

The witness McLeod was handed a note by Mr. Smith, written by defendant, which simply asked Mr. Hutton to give bearer some money asked for in the note.

He was not acting for the defendant.

He was acting as the agent, or rather messenger, of Mr. Smith.

His evidence of Hutton's statements, and of his own and Landis, was not competent.

The defendant had no communication with Landis before such going.

Mr. Landis' evidence was also incompetent.

He says McLeod presented Hutton a note signed by defendant, and on his cross-examination he says he was not present when defendant handed McLeod the note; that his first knowledge of the note was when McLeod showed it to him in the post-office, and asked him to go with him. "I did not know who wrote it."

The statements of McLeod, Landis, and Hutton were made out of court.

They were not made under oath. The defendant was not present. McLeod and Landis were the messengers of Smith and not of the defendant. The defendant did not send either of them to obtain information for him and had nothing to do with their selection.

The witness Landis produced a package and it was offered in evidence by the district attorney and it was received and marked "Exhibit G" under the objections of the defendant's counsel as incompetent and improper (Case, page 62).

The following is "Exhibit G" and what then and there preceded its reception in evidence:

"EXHIBIT G."

Witness produces package.

"This is the identical package that was sealed up and that remained in my custody from that time until now."

The witness opens the package.

DISTRICT ATTORNEY: I will introduce into evidence first the package entire and then the contents.

The envelope is marked "Exhibit G."

Mr. CROWLEY: The bills and the gold pieces contained in this package are objected to on the ground that they are incompetent and improper evidence in this case.

The COURT: Do the numbers of the bills, or the series, correspond in any way to the Yauco certificate?

The DISTRICT ATTORNEY: Yes, sir; both series and numbers.

The COURT: Then I think they are competent.

Mr. CROWLEY: Will your honor give me an exception?

The COURT: Certainly. Note an exception.

Said envelope and contents were thereupon received in evidence, the contents consisting of the following described articles: Two United States ten-dollar gold pieces; one United States treasury note of the denomination of ten dollars of the series of 1880 and numbered A24281565; one ten-dollar note issued by the First National Bank of Saratoga Springs, New York, of the series of 1882 and numbered U182607; one United States silver certificate of the denomination of five dollars, series of 1896, and numbered 25535872, and one five-dollar note issued by the Athol National Bank of Athol, Massachusetts, series of 1882, and numbered T817083."

The second count of the indictment describes the money as follows:

"* * * one United States silver certificate of the denomination of five dollars of the series of 1896 numbered J25535872, one United States Treasury note of the denomination of ten dollars of the series of 1880 numbered A24281565, one ten-dollar note of the First National Bank of Saratoga Springs, New York, of the series of 1882 numbered V182607E, and one five-dollar note of the Athol National Bank of Athol, Massachusetts, of the series of 1882 numbered T817083E, each article being of the value indicated upon the face thereof, twelve United States ten-dollar gold pieces each of the value of ten dollars and one United States five-dollar gold piece of the value of five dollars, * * *"

There is a variance between the notes described in the indictment and those contained in "Exhibit G," as follows:

In the second count of the indictment, which is the only count which attempted to describe the notes, the five-dollar silver certificate is described as "J25535872."

In Exhibit "G" it is described as "25535872," without any letter.

In the indictment the ten-dollar bill of the Saratoga bank is described as "V182607e."

In Exhibit "G" there is no such bill, but is one described "U182607e."

As to those two notes there is a fatal variance and their reception in evidence and submission to the jury was error.

As to the two ten-dollar gold coins contained in Exhibit "G," there was no evidence from which the court or jury could find or say that they were two of the twelve (12) ten-dollar gold coins mentioned in the letter of remittance or named in the indictment.

It was and is without sufficient or any evidence on which to base a legal presumption in a criminal trial for felony.

Therefore the reception of "Exhibit G" in gross, as offered and received, was error.

The court erred in receiving the evidence of Mr. Hutton as to what he said to McLeod and Landis. It was objected to by defendant's counsel, but inasmuch as in the examination of this witness the judge assumed in many of the questions to assist the prosecuting attorney, he sustained himself as against defendant's objections.

The witness Hutton was called by the United States attorney and was sworn as a witness for the United States.

It is not for the United States to credit and discredit in the same breath its own witness.

The following is the evidence claimed to be incompetent and objected to:

"I received an envelope from Mr. Goldsmith. It was unaddressed. It contained money to the amount of $70.00, as I remember it. I only remember there were two ten-dollar gold pieces and the balance was in bills but I do not remember the denominations of the bills. There were, however, some five and ten dollar bills. I cannot say how long I kept

the money in my possession, a few days. Part of it I spent and part of it I turned over to Mr. McLeod and Mr. Landis."

Question. How did you happen to turn that money over to those gentlemen?

Mr. CROWLEY: The question is objected to, because it is not put in shape to make it competent evidence.

The COURT: I will let him state what he did with it.

Mr. CROWLEY: Anything he did with it unless in the presence of the defendant.

The COURT: I have said that I will let him state it.

The defendant excepted.

"Mr. Landis and Mr. McLeod met me and handed me a note from Mr. Crowley asking me to turn over that money. I had often seen his handwriting. I turned it over in response to the request in that note. I turned over to them fifty dollars in fives and ten dollar bills. No gold. I could not say positively whether or not the fifty dollars was part of the seventy dollars which I received in the envelope delivered to me by Mr. Goldsmith. I rather think so but I cannot say positively.

Question. Why not?

Answer. From the fact that I might possibly have received other money and may have paid out that money I received in the envelope.

Question. Did you not, at the time you turned over that money to Mr. Landis and Mr. McLeod, state to them positively that that was fifty dollars of the seventy dollars you had received in that envelope?

Mr. CROWLEY: I object to this question unless the defendant was present.

The COURT: I think he can refresh his recollection if it was so and so.

Mr. CROWLEY: But if the defendant was not present it is incompetent and improper.

The COURT: You had better confine that to the witness' best knowledge.

Question. As a matter of fact are you not on very friendly and even intimate terms with the defendant, Harold Crowley?

Mr. DEXTER: I object to the manner of the dist. att'y. This appears to be a cross-examination. He is his witness.

The COURT: I will let him prove that.

DIST. ATT'Y: I want to ask this question because the witness, to a certain extent, is an unwilling witness.

The COURT: I have not seen sufficient evidence that the witness was unwilling.

By the COURT: From your knowledge of the transaction was that the same money?

Ans. I do not know, from the fact, as I say, I may have received other money in the interim from the time it was turned over to me by Mr. Goldsmith and the time I delivered the money to Mr. Landis.

Question. From the way you keep your money, from your best knowledge, is that the same money or a part of it?

Ans. I think, possibly, that it is a part of it.

Question. What is your best opinion about it?

Mr. CROWLEY: I object to the question of the court as to the best opinion of the witness and to the answer of the witness as to that opinion.

The COURT: I say the word "opinion" in the sense of "knowledge," Mr. Hutton. Now answer the question.

Question. From your knowledge of the circumstances and the way you keep your money and what you receive, according to your best knowledge is that the same money or a part of it?

Mr. CROWLEY: I object to the question because it calls for evidence that is incompetent, improper, and for a conclusion and not for a statement of fact.

The COURT: The witness will answer the question.

Mr. CROWLEY: Please note an exception.

WITNESS, answering: I think possibly a part of it, perhaps.

The COURT: What was your answer? Did you say you think so?

Ans. Yes, that was my answer.

The COURT: Proceed, Mr. District Attorney.

The DIST. ATT'Y:

Question. I desire to repeat my former question, your honor, on the ground that the unwillingness of the witness has been sufficiently shown.

The COURT: What was the question? Read the question.

The stenographer read the following question:

Q. Did you not at the time you turned that money over to Mr. Landis and Mr. McLeod, state to them positively that that was fifty dollars of the seventy dollars you had received in that envelope?"

Mr. CROWLEY: I desire to object to this question, as it is incompetent and improper, unless the defendant was present when such a statement was made.

The COURT: Let the witness answer the question.

Mr. CROWLEY: I desire that the record show an exception taken by us to the ruling of the court.

The COURT: Make an exception. Answer the question.

WITNESS, answering:

I told them that I thought it was. I think that was the extent to which I went in the positiveness of my statement.

Question. Didn't they ask you directly "Is this a part of the identical money that you received in the envelope from Mr. Goldsmith," and didn't you answer them, without any expression of doubt whatever, it was?

Mr. CROWLEY: I object to the question as incompetent and immaterial and for the same reason and grounds as stated in the objection to the other question and answer.

The COURT: Answer the question.

WITNESS, answering: I told them I thought it was.

Question. Didn't you tell them what I have asked you?

Ans. I did not understand your question.

Question. There is a difference, Mr. Hutton, between saying Yes "think it was the money" and "It was the money." I will repeat the question: Did they not ask you directly whether or not it was the identical money and did you not reply to them that it was the money, without any shadow of doubt about it?

Mr. CROWLEY: I object to this question as incompetent, improper, and immaterial.

The COURT: Answer the question, Mr. Hutton.

Mr. CROWLEY: Please note an exception.

WITNESS, answering: As I answered before, I said I thought it was the money. That is my recollection. That is all I can say.

The questions of the judge and of the district attorney were leading and in the nature of a cross-examination of their own witness. They called for the expression of his opinions of what he said to McLeod and Landis.

Some of the questions of the judge called for the expression of the witness' "opinion," and when objected to in that form, were explained by the judge as being asked in the sense of "knowledge," and when objected to in that form, changed to "best knowledge," and being objected to in that form, the objection was even then overruled.

The right of a judge to ask questions is not questioned, nor should a fair and impartial exercise of such right be criticised, but it is respectfully submitted that the course of the judge in this examination of Hutton went too far, and the questions asked and the answers obtained were improper and incompetent.

The reference to Hutton was not by the defendant, nor for information. The statements then made were not under oath, and were without any chance for cross-examination, and the defendant was not present.

"To admit the declarations of a third person in evidence on the ground that one party to the suit has referred the

other party to him, it is necessary that the reference should be for information relating to the matter in issue.

Allen *vs.* Killinger, 8 Wall., 480–487.

United States *vs.* Hartwell, 3 Cliff, 221.

Sixth Assignment of Error.

The court erred in this cause in exercising jurisdiction or in attempting to exercise jurisdiction over this defendant in his trial upon said indictment and in overruling defendant's plea to the jurisdiction of said court upon the ground that there was not any power or authority in law for the holding of said court at Ponce, in said district of Porto Rico, at the time at which defendant was tried and said judgment rendered and commencing May 13, 1901.

The objection was made in every possible way. It was pleaded when his case was moved for trial on May 17, 1901 (Case, pages 8 and 9), and that plea being demurred to by the United States district attorney and the demurrer sustained, and also raised again on defendant's motion for acquittal (Case, pages 63–64), and in arrest of judgment, etc.

The defendant was forced to trial.

It is respectfully submitted that the district court of the United States for the district of Porto Rico was without jurisdiction to try this defendant at its alleged May term at Ponce, commencing May 13, 1901.

The judicial district of Porto Rico and the times and places for holding terms of the United States district courts for said district is created by and derived solely and wholly from the act of the Congress of the United States entitled "An act temporarily to provide revenues and a civil government for Porto Rico and for other purposes," passed April 12, 1900, and to take effect and be in force from and after May 1, 1900.

Its creator was the Congress of the United States, and its only powers and jurisdiction as to this case are those given to it by the Congress that created it in the act above referred to.

Those powers and jurisdiction as to this case are found in sections 33 to 41, inclusive, of that act, and also in section 14 of that act hereinbefore quoted.

By section 34 of that act, hereinbefore quoted, it is provided, among other things, that—

"Regular terms of said court shall be held at San Juan commencing on the second Monday of April and October of each year, and also at Ponce on the second Monday of January of each year, and special terms may be held at Mayaguez at such other stated times as said judge may deem expedient."

The language as to holding terms of said court is imperative, "shall be held," stating the time and place.

As to special terms at Mayaguez, it is permissible, "may be held" "at such other stated times as such judge may deem expedient."

The court commencing at Ponce, May 13, 1901, assumed to be a "regular term."

Grand and petit jurors were summoned.

There was no claim that it was an "adjourned term" of any "regular term."

The judge of said court has made rules for said court and therein assumed to provide as follows:

RULE 1.

"Terms will be held at San Juan on the second Monday in April and October; at Ponce second Monday in January and May, and at Mayaguez first Monday in June and December. Special terms will be held by order if needed."

These rules went into effect September 15, 1900 (Case, page 64).

By assuming to provide for a term of said court in Ponce on the second Monday of May, by rule, the judge attempted to exercise legislative power nowhere given to him. The Congress only could do what he has assumed to do.

It is, or may be, claimed that the defendant waived his right to make this objection by reason of what appears on the records of the court held in San Juan in April, 1901, as follows:

"And afterwards, to-wit:—on the day last aforesaid, (15th day of April, 1901) further entry was made upon the journal of said court in said cause, which said entry is as follows,—

"Thereupon the court makes the following order:—

The case at the request of the defendant and the district attorney not objecting is transferred to the next term of this court at Ponce to be called on the third day of the term, and in the event that the defendant does not give bail then the marshal of this court will, at the proper time, take and transport him there for trial" (Case, page 8, also pages 63–64).

I respectfully submit that no consent of the defendant could confer jurisdiction on said court to try a defendant indicted for felony at a time and place not provided for by an act of the Congress of the United States, or at a term assumed to be fixed and called by said judge by a rule of said court, which rule he was not authorized to make by the

Congress of the United States under the act creating him or by any act of the Congress then in force.

If, by rule of the court or otherwise, he could hold a regular term of the district court, with a new grand jury and petit jury, at Ponce, in May, he could hold such terms in July or September, or indeed in any month of the year.

His will would be law and not any act of Congress.

In Thompson *vs.* Utah, 170 United States, 343–354, this court holds, quoting its decision in Hopt *vs.* Utah, 110 United States, 574:

"We are of opinion that it was not within the power of the accused or his counsel to dispense with the statutory requirement as to his personal presence at the trial. The argument to the contrary necessarily proceeds upon the ground that he alone is concerned as to the mode by which he may be deprived of his life or liberty, and that the chief object of the prosecution is to punish him for the crime charged. But this is a mistaken view as well of the relations which the accused holds to the public as of the end of human punishment. The natural life, says Blackstone, cannot legally be disposed of or destroyed by any individual, neither by the person himself, nor by any other of his fellow-creatures, merely upon their own authority (1 Bl. Com., 133). The public has an interest in his life and liberty. Neither can be lawfully taken except in the mode prescribed by law. That which the law makes essential in proceedings involving the deprivation of life or liberty cannot be dispensed with or affected by the consent of the accused, much less by his mere failure, when on trial and in custody, to object to unauthorized methods. The great end of punishment is not the expiation or atonement of the offence committed, but the prevention of future offences of the same kind (4 Bl. Com., 11). Such being the relation which the citizen holds to the public, and the object of punishment for public wrongs, the legislature has deemed it essential to the protection of one whose life or liberty is involved in a pros-

ecution for felony, that he shall be personally present at the trial—that is, at every stage of the trial—when his substantial rights may be affected by the proceedings against him. If he be deprived of his life or liberty without being so present, such deprivation would be without that due process of law required by the Constitution."

See also De Lima *vs.* Bidwell, 182 U. S., 174.

Under the laws of the United States relating to the judiciary, the times and places for holding courts are fixed and certain.

Where there are exceptions as to the time and place left discretionary with the judge, such exceptions are provided for by law.

By section 684 of the Revised Statutes of the United States it is provided that "the Supreme Court shall hold at the seat of Government one term annually, commencing on the second Monday of October, and such adjourned or special terms as it may find necessary for the dispatch of business," etc.

By section 658 of the Revised Statutes it is provided that:

"The regular terms of the circuit courts shall be held in each year, at the times and places following; but when any of said dates shall fall on Sunday, the term shall commence on the following day."

Then follow the places and dates for holding terms of said circuit courts in the respective circuits.

By section 572 of the Revised Statutes it is provided:

"The regular terms of the district courts shall be held at the times and places following, but when any of said dates shall fall on Sunday, the term shall commence on the following day."

Then follow the dates and places for holding said terms of said court.

Section 578 provides that district courts shall hold monthly adjournments of their regular terms for the trial of criminal cases, when their business requires it to be done, etc. Special terms may be held (section 581), and intermediate terms, and how ordered (section 586).

By section 2 of article 3 of the Constitution of the United States it is provided:

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be held at such places as the Congress may by law have directed."

The enforced trial of the defendant in Ponce in May, 1901, was depriving him of his liberty "without due process of law" under section 1 of the fourteenth amendment to the Constitution of the United States.

Fifth Assignment of Errors.

The court erred in rendering judgment against the defendant in said case upon the indictment and evidence, and said judgment is contrary to law and to the facts.

The whole case, from beginning to end, is full of error; the indictment is void, and the conviction should not be permitted to stand.

The following are among the principal errors:

1. The defendant was illegally indicted, the grand jury not being legally drawn, summoned, formed, and impaneled.

The law required that it should be composed of not less than sixteen qualified persons. (See United States Revised Statutes, section 808.) It had only sixteen members (Holt's order, page 7). Judge Holt knew, if he did not know as to the others named in defendant's plea in abatement, that his son, W. H. Holt, Jr., who was one of the sixteen, had not

been a resident of the island for one year preceding April 8, 1901, when court convened at San Juan and said alleged grand jury was impaneled. This objection applies only in case one year's residence in the island was necessary.

The act of Congress providing temporarily revenues and a civil government for Porto Rico was approved April 12, 1900, and went into effect May 1, 1900. (See section 41 of said act.)

The judge could not have been appointed, confirmed, and commissioned until after said act went into effect (section 34 of act).

The court convened April 8, 1901.

The defendant was indicted April 13, 1901.

The impaneling was twenty-two (22) days and the indictment seventeen (17) days before the expiration of one year from May 1, 1900.

While the record does not show it, the judge and his son did not become residents of Porto Rico until after his appointment by the President and confirmation by the Senate.

That Manuel Andino was an alien, a citizen of Venezuela.

The judge had no power to make rule 38 prescribing the qualifications of grand and petit jurors for the United States district court.

Only Congress and the Legislative Assembly of Porto Rico could prescribe the qualifications of grand and petit jurors for the United States courts in the island of Porto Rico.

2. The overruling of defendant's demurrer to the indictment was error for the reasons hereinbefore stated; as was also the denial of the motion of defendant's counsel that the district attorney be compelled to elect upon what count of said indictment he would proceed to trial (Case, page 22).

3. The court erred in receiving the evidence of Messrs. Hutton and McLeod and Landis, which was objected to by defendant's counsel, hereinbefore stated, and for the reasons hereinbefore specified.

4. The court erred in receiving "Exhibit G" of the United States in evidence for the reasons hereinbefore stated, especially on the ground of variance between the bills and the indictment.

5. The court erred in refusing to direct a verdict of "not guilty" for the reasons stated in the request for such direction.

6. That the court was without jurisdiction, there being no law for holding said term of court at Ponce, commencing May 13, 1901.

7. The record does not show that any judgment of conviction and sentence has ever been entered in this case.

The record shows that the sentence of defendant was as follows:

"Thereupon the court sentenced Harold Crowley to 4 years' imprisonment in the penitentiary at hard labor," without naming in what penitentiary, or at what place, said sentence was to be undergone or executed (Case, page 11).

And that afterwards, when the order of commitment was made out, the penitentiary at San Juan was named.

Before sentence, and upon being asked what he had to say why sentence should not be pronounced, the defendant, by his counsel, stated reasons why sentence should not be pronounced (Case, page 11).

A new trial was moved for and denied (Case, page 12).

Motion in arrest of sentence was also made, and the grounds therefor stated, which was denied (Case, page 13).

These motions were filed afterwards on May 24, 1901.

8. It does not appear from the evidence in the case that the letter 171 was ever dispatched from the Yauco post-office, or ever reached or was received at the Ponce post-office, or came into the defendant's possession.

The only witnesses for the United States on this point

were Postmaster Delgado, of Yauco, and Salvador Amil (Case, pages 22 to 30 and 31, 31, 33).

The witness Delgado had been postmaster at Yauco since November, 1899, and was such all of March, 1901 (Case, page 22).

His only assistant in March, 1901, was his brother, Antonio Delgado, a boy fifteen or sixteen years old, and he had been such for about six months (Case, page 28).

The remittance was prepared in the afternoon of March 23 (Case, page 23).

Although Postmaster Delgado states it was sent from his office to its destination about 6.30 of the morning of March 24, it is submitted as to letter 171 being dispatched he cannot and did not know, as he was not there when it should have been dispatched.

Only his assistant was then present, as the postmaster had left his office before the train came and went which should have carried it.

The letter 171 was prepared in the afternoon of March 23 and put in the safe and alleged to have remained there until the morning of March 24 (Sunday), when his assistant took out of the safe registered matter and dispatched whatever was dispatched that morning.

The postmaster Delgado testified on the trial as follows:

"On the morning of March 24th when we took out this registered letter No. 171 from the safe it was in the same condition in which it had been placed in the safe the night before. Salvador Amil was present in the little window when it was taken out. He is the same I have spoken of as being the witness. Between six and a quarter after six we were there, Salvador Amil and myself, and we saw the enclosure of the registers in the bag and shut it up when we left the office. It must have left the office after we left, which must have been a quarter past six or after a quarter past six. It must have been 6:20 or 6:25. We were not

there when the mail left (Case, page 28). The train left at 6:45 that morning" (Case, pages 22 to 28).

His brother managed the safe when the postmaster was out or was not there. The assistant opened the safe the morning of March 24 (Case, page 29).

The postmaster continued:

"On the morning of the 24th I got up with the object of going for a walk with a girl who was there in Yauco which we had projected, and when I got up I went to the post-office and was there for a little while. I got there and stayed there a little while and then left with Salvador Amil. That was before the mail was dispatched from my office to go to the train (Case, page 29).

After closing the bags or pouches my assistant remained there writing some addresses on some empty bags. We left and he remained there alone, as he delivered the mail every day and the conductor takes it from him every day there" (Case, pages 29–30).

"Mr. Amil was in the little window when I attended to the closing of the pouches. When I arrived at the office that morning the ordinary mail had been already finished and when we arrived there my brother went to the safe and got out the registered mail which was the last thing he put in the bag. After having dispatched the letters and other things he went to the box for the registered matter.

After having put the sacks and registers in a bag and shut and locked the bag he threw it in the place where every morning the conductor gets them. There was one post-office key to that sack in the office being in a box on one of the tables of the post-office where we received the mail. A wooden box. There are some boxes there with the addresses of the letters in front, open where the letters are but it has two drawers and in one of these drawers were the keys.

These drawers have no locks."

The conductor who was assigned to the duty of carrying the mails at that time from the Yauco post-office to the train was Anselmo Rodriguez.

Anselmo Rodriguez was then sworn as a witness for the United States, and testified that he was the mail conductor on train from Yauco to Ponce; that on the morning of March 24 the postmaster at Yauco was not there when he took the mail; that his assistant was there (Case, page 30).

Took an hour and a quarter that morning to go from Yauco to Ponce (Case, page 31). (This would bring the mail to Ponce about 8 a. m.)

Salvador Amil was sworn as a witness for the United States. He was the witness to remittance letter of the postmaster at Yauco and testified:

"I went to the post-office the next day, March 24th, about six o'clock for the purpose of getting the postmaster to go for a walk which we had projected with several lady friends of ours. Then I had occasion to see how the assistant took out of the box the remittance of the previous day united with the two more and the three with a rubber band, and that with three other packages which he brought from another place. He then placed them in a bag after having made a note of something on a ticket, which I do not know much about. After putting them inside the bag he locked the bag and then immediately we left. This bag had a flat lock with a small key. It locked for itself with a spring, but the key was used to unlock it. On the afternoon of the 23rd I stayed at the office to about a quarter after four, I think. The postmaster and I left together. The assistant remained, his brother, Antonio."

He testified that he did not understand English. That the printed contents of letter of remittance were translated to him by the postmaster.

From this evidence it is apparent and indisputable that the postmaster was not present when the pouch containing

the registered matter on the morning of March 24 was sent out from his office, and that he did not know and could not know whether or not package 171 was in it, or sent out of his office in the mail that morning. His brother and assistant was the principal person in charge that morning.

He managed the safe in the postmaster's absence. He handled the keys and managed the office the evening of March 23 and the morning of March 24. He was left with all mail in his charge on the morning of March 24, after the postmaster left and before the arrival of train going through Yauco to Ponce.

This assistant was under the control of the United States and in its employ. He was the one person to prove the deposit in the post-office or mailing of package 171 from Yauco to San Juan, via Ponce.

He was not called as a witness nor his absence explained.

Under the circumstances he was indispensable.

Upon a charge of abstracting a letter from the mails, all the postmasters and clerks through whose hands the letter would pass in the regular course of business should be examined as witnesses where practicable.

United States *vs.* Whittaker, 6 McLean, 342.

Of course this is not always practicable and sometimes impossible.

The entry on the post-bill and in the letter of remittance that packet 171 was dispatched is not evidence of the transmission of such letter, for it may never have been put into the mail, or may have been stolen in its passage.

Dunlap *vs.* Munroe, 7 Cranch, 242–270, affirming 1 Cranch, Circuit Court Rep., 526.

The act of the postmaster in dating his letter March 23 and holding it for transmission until March 24 was expressly forbidden by the post-office regulations, and on the very printed blank used on that occasion, and such acts are

stamped in such regulations as generally indicating "fraudulent intention."

The postmaster is an interested witness. The moneys claimed to be in letter 171 were United States funds being sent to the general depositary, the postmaster at San Juan. The Yauco postmaster and his sureties were liable to be called on by the United States to make them good. He knew this, and hence would try to show he complied with the law and the regulations of the Post-Office Department to relieve himself, if possible.

The United States postal laws and regulations in force in March, 1901, were as follows:

A. Where remittances are made by means of currency or coins, at least one reliable witness should be present at the preparation and dispatch thereof.

B. Wherever it is convenient, remittances should be made in paper currency of the highest denominations that can be obtained; and where coin is included in a remittance it must be, if at a money-order office, enclosed in coin bags, which will be furnished upon application to the depositor. If not at a money-order office, it must be securely wrapped and enclosed in a strong envelope. Remittances are not to be delayed to secure notes of large denomination or to exchange coins for notes.

C. The notes or coins comprising the remittance must be counted by the postmaster or assistant who prepares such remittance in the presence of and also by the witness.

D. A letter must be made out in the case of postal funds on form 3044 A at offices of the first, second and third classes, and form 3044 at offices of the fourth class (see section 1110 as to form 6021 to be used for money-order funds) to accompany the remittance, in which will be given in detail a

description of the money included in such remittance, according to such form and provisions of this section.

E. The denominations of United States notes in use at present are $1, $2, $5, $10, $20, $50, $100, $500, and $1,000. When United States notes are included in a remittance, the series, the number, the "check letter," and the denomination should be given, thus:

"U. S. note: series of 1880—Z712576; letter D, $10.

The United States Treasury number will be found in the right upper corner and left lower corner of a note, except in the $50 note of the series of 1874, where the number will be found near the center of the upper portion of the note. The United States Treasury number is always preceded by a letter or character, and when by a letter it must be given thus: A789987. The "check letter" is printed in two places on every note, one on the right and on one the left, and always in black ink.

F. The denominations of gold certificates in use at present are $20, $50, $100, $500, $1,000, $5,000 and $10,000. The denominations of silver certificates are $1, $2, $5, $10, $20, $50, $100, $500, and $1,000. When certificates are included in a remittance, the series, the number, the "check letter," and the denomination should be given, thus:

"Gold certificate; Department series—C1123; letter C, $100;" or "Silver certificate; series of 1880—A1421; letter A; $20."

On the first issue of silver certificates the series was not given. The series will be found on all printed since 1880. The United States Treasury number will be found in the right upper corner and left lower corner of the certificates of all denominations. The "check letter" is printed in two places on every certificate, one on the right and one on the left, and always in black ink.

G. The denominations of Treasury notes used under the act of July 14, 1890, in use at present are $1, $2, $5, $10, $20, $50, $100, $500, and $1,000. The United States Treasury numbers and the "check letter" will be found as on the United States notes or silver certificates.

H. The denominations of national-bank notes in circulation at present are $5, $10, $20, $50, and $100. When national-bank notes are included in a remittance, the United States Treasury number, the "bank number," the name of the bank and the place where located, the charter number, the "check letter," and the denomination should be given. On national-bank notes the United States Treasury number is printed in the right upper corner. The "bank number" is in the left lower corner of the note under the picture. The charter number will be found in larger figures on the right of the center of the note and below the Treasury number. The "check letter" is printed in two places on every note, one on the right and one on the left, and always in black ink.

I. When coin is included in a remittance the denominations should be given, thus:

2 twenty-dollar gold pieces	$40.00
3 ten-dollar gold pieces	30.00
1 five-dollar gold piece	5.00
Twenty silver dollars	20.00
Ten silver dollars	10.00

J. A copy of the description of the money given in the remittance letter should be kept on the files of the office. The witness should sign the remittance letter and also the copy retained in the post-office.

K. The remittance and letter must in the presence of the witness be enclosed in a strong envelope, sealed, and then

placed in a registered package envelope, which will be carefully sealed and addressed. (See Sec. 838.) The package must also be continuously under the observation of the witness until it is placed in the pouch, and the pouch is locked and delivered to the mail carrier, or other person authorized to receive the same.

L. Where no one can be secured to witness the preparation and dispatch of a remittance, the postmaster should make a record of the fact on the remittance letter, and the copy retained in the office, giving the reasons therefor.

M. Where a postmaster fails to comply with the foregoing instructions, he must, if the money is lost, make good the amount, unless the facts of which he has neglected to provide the evidence are satisfactorily established through other sources.

9. The evidence does not show that this package 171 ever reached Ponce. Miller, the postmaster at Ponce; Stephens, Skinner, Salicrup, the defendant, and every one in the Ponce post-office except a clerk named Oppenheimer, Money-order Clerk Hodge, and the mail-carriers, the carriers not having access to the office on Sundays, were sworn as witnesses, and each testified that he never saw package 171.

Witness Skinner, at Ponce, on March 24, ran pencil through No. 171, and wrote the words "Not received" on return receipt (Case, page 71, Exhibit D").

Skinner was first to discover, at about 12.30, that it was not in the Ponce post-office (Case, page 38).

Under this evidence it cannot be fairly and legally claimed that the letter or packet 171 came into the defendant's possession at Ponce aforesaid, or that it ever reached the Ponce post-office.

Had the assistant postmaster at Yauco been called as a witness and testified that he placed packet 171 in the mail

pouch for Ponce, and that it was in the pouch when he delivered it to the mail conductor or carrier, on the train from Yauco to Ponce, then the legal presumption would arise and exist that it arrived at Ponce in due course of mail.

Under the regulations of the Post-Office Department, a registered letter is considered mailed when an outsider hands it to the postmaster and takes a receipt therefor.

This does not apply when the postmaster is transmitting Government funds by registered mail to a designated depository. In such case every step must be shown, down to putting in pouch and giving to mail-carrier, before it can be said to be in the mail and mailed.

Having it in his office and entering it on his book, putting in safe, etc., does not in such cases constitute mailing.

The defendant's guilt is presumed because on March 24, at Ponce, he had between $100 and $175 in his possession, testified to by one Kahrman—part in gold and part in bills. Kahrman's evidence is not sustained by the witness Lee, nor is he corroborated by defendant's witness Chalk. Kahrman is not a clear and reliable witness. His memory is poor. There is no evidence that it was the money which is described in the letter of remittance.

The defendant states about how much money he had when he left Ponce for San Juan. He made and swore to two statements at the request of and prepared by United States Inspector Smith.

The United States put them in evidence, being "Exhibits E and F." The United States thereby made him its witness.

There is no conflict or contradiction between those statements. There is no evidence anywhere that those statements are not true.

And it is further presumed because on March 25 or 26 he handed to one Goldstein, at San Juan, an envelope for one W. A. Hutton and which Goldstein put into a drawer open and accessible during the day and locked only during the night, and the contents of which envelope were unknown to

him, and which so remained in such open drawer, to which others had access, until the day following, when he delivered it to Mr. Hutton. It contained $65 or $70, and Mr. Hutton put the money in his pocket and mixed it and used it with other money, and on March 28, upon a written note of the defendant, he handed to Messrs. Landis and McLeod, at San Juan, $50 in money.

The money Hutton so turned over was two ten-dollar bills, two five-dollar bills, and two ten-dollar gold pieces (Case, page 60; also Case, page 62), and it was claimed that the bills are the same series and numbers as those contained in said packet 171, and the gold also.

While it does not appear in the record, the geographical fact is that the island of Porto Rico is about one hundred miles long east and west and between thirty and forty miles wide north and south; that Ponce and San Juan are connected by a winding military road about seventy-five miles long, taking about twelve hours to travel it between those places, and that passenger steamers carrying mail matter run back and forth from Ponce to San Juan in about the same time, around the coast, and also other boats run back and forth between the one and other island ports, and that there are other overland routes between Ponce and San Juan, and the island contains about one million people.

There was sufficient time and opportunities for many persons to go from Yauco or Ponce between March 24 and March 28, when Hutton handed some money to Messrs. Landis and McLeod.

From the record, it cannot be legally claimed that this defendant committed the alleged offense. If it was committed, it occurred at Yauco or some point between Yauco and Ponce.

The evidence, at most, may create a suspicion; but a person is not to be convicted of stealing merely because he cannot or does not give an account in what way or when or where he came into possession of the goods, assuming that

they or some of them are found in his possession. Possession, under some circumstances, is at least only *prima facie* evidence of guilt, but in criminal cases this is insufficient to convict.

1 Bishop's Cr. Pro., sec. 503.

In this case Hutton got an envelope from Goldstein some days after March 24, and does not swear positively that the money, in whole or in part, he handed McLeod was the money which he received from Goldstein. He says he thought some of it was.

1 Chitty's Cr. Law, 459.

Book 4, Black. Com., 359.

2 Hale's Pleas of the Crown, 289–290.

Davis *vs.* The People, 1 Parker's Cr. R., 447 (New York), 10.

There is no evidence in the record that said letter had been or had not been delivered to the postmaster at San Juan, the person to whom it was alleged to have been addressed.

Proof of this was indispensable.

The United States had it in its power to prove that letter 171 did or did not reach the San Juan post-office.

Witnesses could have been summoned from the San Juan post-office who could have told if it was or was not delivered.

Defendant's conduct was inconsistent with guilt of the crime charged.

There was no positive evidence against the defendant.

The evidence was wholly circumstantial. The two principal circumstances from which guilt could be suspected were the alleged possession by the defendant of about $175 in gold and bills, Sunday afternoon, March 24, in Ponce, according to the witness Kahrman, and that two of the bills given by Hutton to McLeod on March 28 in San Juan correspond in series, letters, and numbers with two of the bills which the postmaster at Yauco says were put into his letter

of remittance to the postmaster at San Juan, at Yauco, March 23 or 24.

This might create a suspicion against the defendant, but was insufficient to justify and sustain a conviction.

He was of good character and reputation.

The law and the nature of his employment presumed that, and two witnesses who had known him on the island longest testified to it, the postmaster at Ponce and Mr. Houghtaling, employed in the auditor's office at San Juan, to which office up to a certain period all reports of postmasters on the island of their receipts and expenditures were made.

The defendant had been on the island since September 22, 1898, to March 24, 1901.

The defendant offered to show that while he was on the island as acting postmaster he had handled and reported to the auditor of the island about $200,000 without the loss or discrepancy of a cent, and that all his reports were regularly and properly made, but the court excluded the money part of it (Case, pages 69–70).

He was acting postmaster at Playa Ponce, the port of the place this offense is alleged to have been committed, for eleven months; acting postmaster at Coamo for five months; acting postmaster at Arecibo for one year, and postal clerk at Ponce for thirty days, being sent and acting as the exigencies of the postal service, at first under military supervision, required on the island, from place to place (Case, page 70). His last service was at Ponce, ending March 24, and he was then leaving for Buffalo, New York, to take a position in the postal service there (Case, page 45).

He knew the postal regulations; knew that the printed instructions at the head of money-order remittance letters required that bills, coin, and drafts be described by postmaster remitting same, in presence of a witness if possible, telling series, letters, and numbers of all bank bills and notes

sent in remittance; knew also routine of registering and dispatching same, etc.

His conduct on March 24 and afterwards was inconsistent with guilt.

He had money of his own and was not in want of money.

With knowledge of the postal regulations, his open possession of gold and bills, and showing them, and that within a few hours after the alleged offense was alleged to have been committed, was not the act and conduct of a guilty man.

Chalk, a witness for the defense, saw gold and bills in his possession Saturday evening, March 23 (Case, page 68).

His whole conduct with Post-office Inspector Smith, at San Juan and Ponce and elsewhere, commencing March 28, was inconsistent with guilt (Case, pages 48, 49, 50, 51, 52, 53, and 54).

In the language of Smith:

"He showed every willingness to do as I desired him to do without any coercion on my part. From start to finish in this investigation, so far as I have been connected with it, he has placed himself freely and at all times at my command, entirely so.

He has always been perfectly willing to assist and coöperate with me, at all times. I do not remember, while in the carriage, of stating to Mr. Crowley that it would be better for him to do one thing or the other in this matter. He was so entirely willing to give me all the information that he possessed that I do not remember having made such a statement." (And then follows the remarkable statement and extraordinary conduct of this officer of the Government:)

"I told in my direct examination that when I came back from Yauco the next morning I called at the hotel and woke Mr. Crowley up. They gave me the number of his room downstairs and I went up alone. I rapped at the door and got no answer and I opened it and went into the room and

called him a number of times. He was sound asleep. His clothing was lying on a chair, a part of it on one chair and part of it on another, and I looked through it to see if any of those bills were in his clothing. I looked through the man's clothing while he was lying asleep there and searched his clothes and I did not find any five or ten dollar bills. I did not think it was necessary for him to invite me" (Case, pages 53–54).

I am informed that this man is yet in the postal service of the United States.

Because of the foregoing errors I respectfully ask that the indictment in this case be declared null and void; that the verdict be set aside and the sentence and judgment reversed and the defendant discharged.

RICHARD CROWLEY,
Counsel for Defendant, Lockport, New York.

19334

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

HAROLD CROWLEY, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 205.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

April 8, 1901, at San Juan, a term of the district court of the United States for Porto Rico began, and on the 10th a grand jury returned an indictment against plaintiff in error charging him with violating laws of the United States while employed in its postal service. The first count charged larceny of a letter, containing money and other valuables; the second that he secreted, embezzled, and destroyed such letter, with its contents; and the third likewise charged him with secreting and embezzling the letter and contents.

On April 13 a plea in abatement was filed, which alleged that various members of the grand jury were

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without requisite qualifications, and also set up objections to methods pursued in forming same. It stated that one member was a citizen of Venezuela; that another had not been a resident of Porto Rico for one year; that a number were not assessed on the last assessment roll on property valued at $200, contrary to requirements of the statute passed by the legislative assembly of Porto Rico, effective April 1, 1901, providing qualifications of jurors; and that the names of several members were not publicly drawn from a box then containing three hundred names, as prescribed by section 800, Revised Statutes of the United States, and act of June 30, 1879, and that no writs of *venire facias* were directed to such persons, as provided by section 803.

It further alleged (R., 5):

> Defendant says that he was not present in court at the time of the selection, summoning, and impaneling of the jury aforesaid, and has had no opportunity to make any challenges to the same as to the members thereof, because he did not know of said action and was not at the time represented by counsel, but that he has this day learned of the aforesaid acts for the first time and therefore immediately presents his plea.
>
> Defendant says that he has been and would be greatly prejudiced by the improper and illegal selection and impaneling of such grand jury as aforesaid, as it was composed at the times aforesaid of persons disqualified to act and who were not residents or taxpayers of Porto Rico, as required by law, and because of their unfamiliar-

> ities with the island and the conditions and circumstances, material matters in this case and relevant thereto, some of said jurors as aforesaid and having been but a few months in the island and temporarily sojourning herein.
>
> In addition to W. H. Holt, jr., and William Baun, the following gentlemen of the grand jury were American citizens: John D. H. Luce, E. L. Arnold, Henry W. Dooly, J. Rymon Latimer, foreman thereof, Charles H. Post, Frank Antonsanti, by reason of which and their supposed knowledge of such practices by grand juries in the courts of the United States might, and as defendant believes, did contend the deliberations of said jury so as to induce a finding of an indictment where the Porto Rican citizens thereof might not have otherwise done.

The record (51, 52) indicates plaintiff in error knew he was charged with offense specified in indictment, and was arrested therefor prior to April 1, 1901.

A demurrer to the plea was sustained, defendant was arraigned, and pleaded not guilty (R., 7). Afterwards a general demurrer to the indictment was interposed and overruled (R., 8).

April 15 the following order was entered:

> This case, at the request of the defendant, and the district attorney not objecting, is transferred to the next term of this court at Ponce, to be called on the third day of the term.

On May 17, at Ponce, the cause was called for trial. Objection was interposed on ground that the court had no jurisdiction to proceed, because the term was not a

regular one as provided by law, and it had no authority therefor except at such a term This objection was overruled, a jury impaneled, the cause tried, and a verdict of guilty rendered on May 18 (R., 10). No objection was made to the charge of the court. A sentence of four years in the penitentiary was imposed May 21.

On May 25, motion for new trial and arrest of sentence having been overruled (R., 16), petition for appeal to this court was granted, amount of the bond fixed, and it was ordered—

> That upon the giving of the same, with service of citation, the execution of the return be suspended and stayed until the determination of the appeal, and that a certified transcript of the record and proceedings herein be forthwith transmitted to said Supreme Court of the United States.

Citation to appear within thirty days was served June 22, 1901, and on same day the judge approved bail bond, and undertook to extend time for presenting and filing bill of exceptions to October 15, 1901. October 29, 1901, an order, signed by the judge, was filed reciting, in harmony with facts, that the district attorney, upon request of defendant's counsel, had consented to sixty days' further time for settlement of bill of exceptions, and directing that the order be made *nunc pro tunc* as of the day when former extension expired. The bill was signed and filed (R. 79) December 14, 1901. December 12, 1902, writ of error from this court was granted; on January 2, 1903, citation

was served, and transcript was filed February 2 following.

The act of Congress of April, 12, 1900 (31 Stat., c. 191, p. 77), entitled "An act temporarily to provide revenue and a civil government for Porto Rico, and for other purposes," provides:

> SEC. 8. That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended, or repealed by the legislative authority hereinafter provided for Porto Rico or by act of Congress of the United States. * * *
>
> SEC. 14. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico.
>
> SEC. 15. That the legislative authority hereinafter provided shall have power by due enactment to amend, alter, modify, or repeal any law or ordinance, civil, or criminal, continued in force by this act as it may from time to time see fit.

SEC. 34. That Porto Rico shall constitute a judicial district to be called "The district of Porto Rico." The President, by and with the advice and consent of the Senate, shall appoint a district judge, a district attorney, and a marshal for said district, each for a term of four years, unless sooner removed by the President. The district court for said district shall be called the district court of the United States for Porto Rico * * * and shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States, and shall proceed therein in the same manner as a circuit court. The laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. Regular terms of said court shall be held at San Juan, commencing on the second Monday in April and October of each year, and also at Ponce on the second Monday in January of each year, and special terms may be held at Mayaguez at such other stated times as said judge may deem expedient. All pleadings and proceedings in said court shall be conducted in the English language.

The United States district court hereby established shall be the successor to the United States provisional court established by general orders numbered eighty-eight, promulgated by Brigadier-General Davis, United States Volun-

teers, and shall take possession of all records of that court, and take jurisdiction of all cases and proceedings pending therein, and said United States provisional court is hereby discontinued.

SEC. 35. That writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States or a treaty thereof, or an act of Congress, is brought in question and the right claimed thereunder is denied. * * *

General Orders, No. 1, October 18, 1898 (Major-General Brooke), among other things, provided:

> The provincial and municipal laws, in so far as they effect the settlement of the private rights of persons and property and provide for the punishment of crime, will be enforced unless they are incompatible with the changed condition of Porto Rico, in which event they may be suspended by the department commander. They will be administered substantially as they were before the cession to the United States.

By General Orders, No. 88, June 27, 1899 (Brigadier-General Davis), it was provided:

> The judicial power of the provisional court hereby established shall extend to all cases

> which would be properly cognizable by the circuit or district courts of the United States under the Constitution (sec. 2); its procedure, rules, and records shall conform as nearly as practicable to those observed and kept in Federal courts (sec. 4); *the jury system may be introduced or dispensed with in any particular case in the discretion of the court* (sec. 5); and that the district attorney shall be authorized to *present to the court informations* against all parties for violations of United States statutes and regulations (sec. 7).

Prior to April 12, 1900, the local laws of Porto Rico contained no provisions for a jury of any kind except as specified by the above military order. By an act of legislative assembly, approved January 12, 1901, the right of trial by jury was established under certain conditions. (R. S. and Codes of Porto Rico, p. 171.) By an act of the same assembly, approved January 31, 1901, elaborate provision is made concerning trial by jury and qualifications of jurors. (R. S. and Codes of Porto Rico, p. 172.) Section 2 of the act of January 12 provides:

> If any person is charged with a crime by a prosecuting attorney or by a grand jury, the punishment for which is capital punishment or two years or more confinement in any penal institution of the island, he may demand a trial by jury only in the district court having jurisdiction, and it shall be granted him under the following provisions.

These acts apply only to petit juries, and at time of indictment and trial in the present cause there was nothing in the local laws providing in terms for grand juries.

Under the municipal laws of Porto Rico existing prior to its cession criminal proceedings were instituted without interposition of a grand jury, upon information by either public or private prosecutor. (See Laws of Criminal Procedure of Cuba and Porto Rico, articles 100, 270, 271, 272, 277.)

No *statutory* law of the United States requires indictment by a grand jury before one charged with an offense may be put on trial.

ARGUMENT.

HAS THIS COURT JURISDICTION?

This court's power to review causes from Porto Rico is derived from section 35, act of April 12, 1900 (31 Stat., 85, c. 199), set out above.

That part of the section giving appeals and writs of error in the same cases as from supreme courts of Territories was construed in *Royal Insurance Company* v. *Martin* (192 U. S., 149), where it was held that such causes as might have been reviewed under act of March 3, 1885 (23 Stat., 443, c. 355), when decided by the supreme court of a Territory could be now reviewed when coming from Porto Rico. This court has

repeatedly decided that under that act it had no jurisdiction in criminal cases. (*Gonzales* v. *Cunningham*, 164 U. S., 617.)

If jurisdiction exists in the present case it must be derived from that part of section 35 which provides: "And such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied."

The Constitution has never been expressly extended to Porto Rico and the cession of the island did not render its provisions applicable therein. (*Hawaii* v. *Mankichi*, 190 U. S., 218, 220, and cases cited.)

The Constitution was not brought in question and no right claimed thereunder was denied.

No treaty was in any way brought in question.

The *validity* of no act of Congress was called in question.

I am unable to find any *statutory* law of the United States which requires action by a grand jury before trial for an offense, or which provides that no one shall be held to answer for an infamous crime unless on presentment or indictment. In *Hawaii* v. *Mankichi* (190 U. S., 218) the right to such proceeding was held not to be fundamental.

The district court for Porto Rico is not a constitutional court, and the provisions of the Revised Statutes applicable to "courts of the United States" or "district or circuit courts of the United States"

do not apply thereto. (*American Insurance Company* v. *Canter*, 1 Peters, 511, 546; *United States* v. *McMillan*, 165 U. S., 504, 510.)

The provisions of the Revised Statutes relating to empaneling of grand juries for district and circuit courts (Title 13, chapter 15) do not apply to district court of Porto Rico, because it is not a district or circuit court of the United States. (*In re Mills*, 135 U. S., 263, 267; *Reynolds* v. *United States*, 98 U. S., 145; *Ex parte Farley, Ex parte Wilson*, 40 Fed. Rep., 66.)

The sections of the Revised Statutes prescribing the qualifications of jurors relate to laws of the State wherein they are to serve, and are inapplicable to Porto Rico.

In *Clinton* v. *Engelbrecht* (13 Wall., 434), this court held that the provisions of the Revised Statutes did not apply to juries assembled in a Territory, that they should have the qualifications and be selected according to the Territorial law, and said (p. 445):

> If this opinion needed additional confirmation it would be found in the judiciary act of 1789. The regulations of that act in regard to the selection of jurors have no reference whatever to Territories. They were framed with reference to the States and can not, without violations of rules of construction, be made to apply to the Territories of the United States.

None of the statutes alleged by plaintiff in error to have been violated were applicable, and he could claim no right thereunder.

In harmony with the rule governing writs of error to State courts, to give this court jurisdiction, in any view, it was necessary that a right claimed under an act of Congress should have been specially set up at the proper time and in the proper way, the attention of the court called thereto, and that there should have been a decision against the right. (*Sayward* v. *Denny*, 158 U. S., 180.)

This court declined in *Watts* v. *United States* (91 U. S., 580) to review a criminal case from Washington Territory under a law giving it the power so to do where the Constitution, a treaty, or statute was drawn in question, because it did not appear that question had been made as to any of these.

The circumstances of the present case show that if plaintiff in error could at any time have relied on matters in his plea in abatement he did not seasonably assert them.

IN A CRIMINAL CASE FROM PORTO RICO INQUIRY BY THIS COURT SHOULD BE LIMITED TO FEDERAL QUESTIONS, AS IN WRITS OF ERROR TO STATE COURTS.

Section 709, Revised Statutes, provides that final judgments or decrees in the highest court of a State may be reexamined in this court "where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed."

Section 35 of the Porto Rican act (31 Stat., 85, c. 191) provides:

> Writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question, and the right claimed thereunder is denied. * * *

If the court has jurisdiction to try the present cause it is because some right claimed under an act of Congress has been denied.

Section 35 of the Foraker Act applies to final decisions of the supreme and district courts of Porto Rico, and its provisions granting review where some right claimed under an act of Congress has been denied are similar to those of the act regulating writs of error to a State court.

The established rule is that on writs of error to a State court no Federal question will be exmamined except one which was directly raised and passed upon below, and no question of general law will be considered except to sustain the action of the State court. (*Murdock* v. *Memphis*, 20 Wall., 591; *McLaughlin* v. *Fowler*, 154 U. S., 663.)

Is there reason for adopting a rule in reference to causes from Porto Rico less strict than the one which applies to causes from State courts?

I submit that nothing can now be open for consideration for the purpose of reversing the action of the court below, except whether an act of Congress has been called in question and a right claimed thereunder improperly denied.

FIRST ASSIGNMENT OF ERROR.

This assignment calls in question the action of the trial court in overruling plea in abatement filed three days after indictment was found and five days after grand jury was impaneled. The plea alleged error in drawing, impaneling, and formation of the grand jury and that certain of its members were disqualified because of failure to comply with sections 800 and 803 of the Revised Statutes and act of June 20, 1879 (21 Stat., 43), and also lack of qualifications prescribed by jury act of Porto Rico effective April 1, 1901.

The objections specified in the plea were made too late; they related to defects or imperfections in matters of form; and, moreover, did not tend to prejudice the accused.

It is a fair inference from statements in the record (pp. 51, 52) that plaintiff in error had notice of charge against him and was arrested therefor prior to the time when grand jury was impaneled, and the plea in abatement does not undertake to deny this. It does not appear that when the grand jury was formed plaintiff in error interposed objection either to array or polls, nor is any sufficient reason given for his failure so to do. It was his duty to bring forward such objections when the grand jury was being organized.

Bishop on Crim. Proc., 3 ed., vol. 1, secs. 877, 878.

"One notified by the prosecuting officer of a purpose to lay a particular charge against him before the par-

ticular grand jury, may present his challenges, the same as though under bonds to appear.

"Hence all such persons may be present at the organization and make their challenges, either to the array or to the polls.

"And if such a person chooses not to avail himself of this opportunity, and an indictment is found against him, he can not afterwards, according to the common rulings, and by statutes in many of our States, take an objection to the panel or to a particular juror which he then was entitled to, but neglected to bring forward."

Wharton's Criminal Pl. & Pr., secs. 344, 345.

In *Agnew* v. *United States* (165 U. S., 36, 44) it was held that a plea in abatement must be pleaded with strict exactness; that objections to irregularities in selecting and impaneling the grand jury must be taken at first opportunity in power of defendant; that when one is notified that his case is to be brought before the grand jury he should proceed at once to take exceptions to its competency; and that for such irregularities as do not prejudice defendant he has no cause of complaint and can take no exceptions. In reference to plea filed in that case Chief Justice Fuller, delivering the opinion, said (p. 45):

> The court opened December 3, 1895, and the indictment was returned December 12, yet defendant did not file his plea in abatement until December 17. The plea does not allege want of knowledge of threatened prosecution on the part of the defendant, nor want of opportunity

to present his objection earlier, nor assign any ground why exception was not taken or objection made before; and, moreover, the plea is fatally defective in that, although it is stated that the drawing "tended to his injury and prejudice," no grounds whatever are assigned for such a conclusion, nor does the record exhibit any such.

Bishop on Criminal Procedure, vol. 1, sec. 327.

"A plea in abatement requires the utmost fullness and particularity of statement, as well as the highest attainable accuracy and precision; leaving, on the one hand, nothing to be supplied by intendment or construction; and, on the other, no supposable special answer unobviated. The rule * * * requires a pleader not only to answer fully what is necessary to be answered, but also to anticipate and exclude all such supposable matter as would, if alleged on the opposite side, defeat his plea."

Lewis v. *United States*, 1 Head. (Tenn.) 329
State v. *Newer*, 7 Blackf. (Ind.) 307.
People v. *Lauder*, 82 Mich., 114.
Commonwealth v. *Smith*, 9 Mass., 106.
People v. *Jewett*, 3 Wend. (N. Y.), 314, and 6 Wend., 386.
Dowling v. *Mississippi*, 5 Smedes & M., 664.
State v. *Rickey*, 5 Halst. (N. J.), 83.

Section 1025 of the Revised Statutes provides:

No indictment found and presented by a grand jury in any district or circuit or other court

of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

United States v. *Benson*, 31 Fed. Rep., 896, 901.

United States v. *Molloy*, 31 Fed. Rep., 19, 23.

United States v. *Ewan*, 40 Fed. Rep., 451.

Wolfson v. *United States*, 101 Fed., 430.

Thompson and Merriam on Juries, sections 554, 564.

The facts alleged in the plea which might be supposed to support the conclusion that the composition of grand jury was such as to prejudice defendant are that one member, Manuel Andino, was a citizen of Venezuela, and that W. H. Holt, jr., had not been a resident of Porto Rico for one year. It does not appear how long Manuel Andino had resided in Porto Rico, and it does appear that W. H. Holt, jr., was an American citizen. The allegation that certain members were American citizens and for that reason and their supposed knowledge of the practices of grand juries in the United States defendant was prejudiced, is manifestly without merit.

No indictment was necessary. An information by the public prosecutor was all the law demanded.

Each count of what is styled the indictment was signed by the United States attorney, and if the instru-

ment is insufficient as an indictment it may be treated as an information.

An information, in its general structure, is similar to an indictment, and both are tested by the same rules in so far as the description of the offense is concerned. (*King* v. *State*, 17 Fla., 183, 186; *Merwin* v. *People*, 26 Mich., 299; *Donnelly* v. *People*, 11 Ill., 552; *State* v. *Miles*, 4 Ind., 577.)

In the courts of the United States, in the absence of statute, it is not necessary to swear to informations. (*United States* v. *Polite*, 35 Fed. Rep., 58; *Long* v. *People*, 135 Ill., 435; *State* v. *Brooks*, 33 Kans., 708; *United States* v. *Hoskins*, 5 Mackey, 478.)

Under the Spanish law, prior to cession of Porto Rico, indictments and grand juries were unknown. The formal way of commencing a prosecution was by information (Code of Criminal Procedure; secs. 101, 105, 270, 271, 272, 277), and it was not necessary that such information be under oath. Article 277, Spanish Code, does not require an oath where private prosecutor presents information, and no provision demands more of the public prosecutor.

General Orders, No. 1, issued by Major-General Brooke, October 18, 1898, declared that municipal laws for punishment of crime would be enforced unless incompatible with changed condition of Porto Rico, in which event they might be suspended, and they were to be administered substantially as before the cession.

Under methods of procedure provided for the provisional court of the United States established by Gen-

eral Orders, No. 88, every offense could be prosecuted upon information by public prosecutor. The United States district court is successor of the one established by that order.

The Foraker Act (section 8) continued the laws and ordinances of Porto Rico then in force, except as altered or amended therein, or by prior military orders, so far as not inconsistent with statutory laws of the United States not locally inapplicable.

Neither the Foraker Act nor the statutory laws of the United States make an indictment or presentment by a grand jury necessary for prosecution of a crime; no military order made, and no act of the legislative assembly of Porto Rico has made, an indictment a prerequisite to a trial for crime.

The prosecution of all crimes in Porto Rico may therefore be begun by information by the prosecuting attorney.

The right to demand presentment or indictment by a grand jury and trial by petit jury constituted as at common law is not fundamental and does not necessarily exist in all places subject to jurisdiction of the United States. (*Hawaii* v. *Mankichi.*)

In re Mills (135 U. S., 263, 267), Mr. Justice Harlan, delivering opinion of the court, said:

> It is significant that the act establishing a United States court in the Indian Territory makes no provision for a grand jury, although it does provide for petit juries in civil and criminal cases. A grand jury, by which presentments or indictments may be made for offenses

against the United States, is a creature of statute. It can not be impaneled by a court of the United States by virtue simply of its organization as a judicial tribunal. The provisions of the Revised Statutes relating to the impaneling of grand juries for the district and circuit courts (title 13, c. 15) do not apply to the court established in the Indian Territory by the act of March 1, 1889, for, although the latter is a court of the United States, it is not a district or circuit court of the United States. (*Reynolds* v. *United States*, 98 U. S., 145, 154; *Ex parte Farley, Ex parte Wilson*, 40 Fed. Rep., 66.)

The provisions of the Revised Statutes in reference to empaneling grand juries, and the qualifications of members do not apply in Porto Rico.

Section 800 of the Revised Statutes provides:

> Jurors to serve in the courts of the United States and each State, respectively, shall have the same qualifications * * * as jurors of the highest court of law in such State.

The provisions of this section are locally inapplicable to Porto Rico and were not extended there by section 14 of the Foraker Act. The same thing is true of section 2 of the act of Congress approved June 30, 1879, providing for the method in which jurors shall be drawn. Section 803 of the Revised Statutes is directory, and clearly a failure to comply with it would be a mere matter of form.

All provisions of the Revised Statutes in reference to grand jurors and formation of grand juries by their

terms apply to district and circuit courts of the United States and are inapplicable except to such courts. The district court of Porto Rico is not, in a constitutional sense, a court of the United States, and the provisions relating to jurors for such courts do not apply to it. (*In re Mills*, 135 U. S., 263.)

In any view, the objections specified in the plea to the formation and membership of the grand jury were not sufficient to render the indictment invalid.

As showing that alleged irregularities in forming the grand jury and failure to issue writs of *venire facies* were not fatal, reference is made to the case of *United States* v. *Eagan* (30 Fed. Rep., 608, 610, opinion by Mr. Justice Brewer); *United States* v. *Richardson* (28 Fed. Rep., 61); *United States* v. *Ambrose* (3 Fed. Rep., 283).

In opposition to the objection founded upon the lack of property qualifications by certain members of the jury reference is made to *United States* v. *Benson* (31 Fed. Rep., 896).

As to the objections founded upon the nonresidence of one grand juror and the alienage of another I refer to *United States* v. *Tuska*, 14 Blatch., 5; Federal Cases, No. 16, 550; *State* v. *Alexander*, 31 La. Annual, 1100; *United States* v. *Reed*, 2 Blatch., 435; Federal Cases, 16, 134; *United States* v. *Ewan*, 40 Fed. Rep., 451; *Boyington* v. *State*, 2 Porter (Ala.), 100, 135; *State* v. *Haynes*, 54 Iowa, 109; *Ex parte Harding*, 120 U. S., 782.

SECOND ASSIGNMENT OF ERROR.

This assignment challenges action of the court in overruling the general demurrer interposed by defendant to the indictment. (R. 8.)

On page 7 of record it appears that immediately after the demurrer interposed by counsel for the Government to plea in abatement was sustained defendant was duly arraigned and pleaded not guilty. After plea of not guilty was entered (R. 8) demurrer to the indictment was interposed. It was therefore too late. "A demurrer should be promptly made, and it is too late after plea is entered." (Wharton's Criminal Pl. and Pr., sec. 407 b.) Moreover, the indictment seems clearly sufficient.

THIRD ASSIGNMENT OF ERROR.

This assignment arises out of request of defendant, at close of Government's proof, to direct verdict of not guilty for various reasons then assigned. (R., 63.)

The indictment was based upon section 5467, Revised Statutes, and charges with sufficient accuracy the offense therein mentioned.

If there was defect in proof as it existed when the Government rested its case this was cured by the evidence thereafter admitted. It was within the discretion of the court to permit the Government to introduce additional proof, and no wrong was done defendant thereby.

In connection with this assignment I call attention to the fact that the bill of exceptions which appears in

record was signed after expiration of the term during which trial took place, after an appeal to this court had been prayed and perfected, a considerable time after period first granted therefor and also after expiration of any time allowed *in advance* for its settlement. The court first allowed until June 15, 1901. (R., 16.) On the 22d day of June, 1901, the court, upon agreement of counsel, extended the time until 15th of October. (R., 18.) On October 29, 1901, the district attorney agreed that time for settlement might be extended sixty days from the 22d day of October, and an order was entered in harmony therewith. (R., 20, 21.) Appeal to this court was perfected and prisoner released on bond June 22, 1901.

I suggest the court had no power to settle and sign the bill of exceptions as it undertook to do December 14, 1901, and that it can not be considered a part of the record. (*Muller* v. *Ehlers*, 91 U. S., 249, and cases cited therein; *Ensminger* v. *Powers*, 108 U. S., 292–302.)

FOURTH AND FIFTH ASSIGNMENTS OF ERROR.

Rule 35 of this court provides that plantiff in error shall file with the clerk of the court below an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged; and certainly the general purposes for which that rule was made will require its observance in a case from

Porto Rico, although under a strict construction it might be held to apply only to writs of error taken under the judiciary act of 1891.

Section 997, Revised Statutes, provides "There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party."

The fourth and fifth assignments are so general that they may be said to amount to nothing.

SIXTH ASSIGNMENT OF ERROR.

This assignment is upon contention (R., 9) that the court sitting at Ponce in May, 1901, had no jurisdiction to try the cause. The cause was transferred from San Juan to Ponce upon request of defendant and by rule of court a term was held there on the second Monday in May. (R., 64.) There is nothing to show that he was in any way prejudiced by trial at Ponce.

Section 34 of the Foraker act provides that "regular terms of said (district) court shall be held at San Juan commencing on the second Monday in April and October each year; also at Ponce on the second Monday in January of each year. * * *"

Sections 578, 581, and 661 of the Revised Statutes are as follows:

SEC. 578. District courts shall hold monthly adjournments of their regular terms for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases.

SEC. 581. A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. And any business may be transacted at such special term which might be transacted at a regular term.

SEC. 661. Any circuit court may, at its own discretion, or at the discretion of the supreme court, hold special sessions for the trial of criminal causes.

There is nothing in the record to show that the term of the court at Ponce, during which this trial took place, was not regularly held in harmony with the provisions of the statutes above quoted or proper orders.

The Foraker Act does not forbid the holding of other terms than those by it required at the times and places stated.

I SUBMIT FOR THE CONSIDERATION OF THE COURT THAT THE COMMON LAW DOES NOT PREVAIL IN PORTO RICO, AND THAT RULES OF EVIDENCE AND PROCEDURE RESTING ALONE THEREON HAVE NOTHING TO DO WITH TRIALS IN THAT ISLAND. THE WHOLE CASE ATTEMPTED TO BE MADE OUT FOR PLAINTIFF IN ERROR PROCEEDS UPON A DIFFERENT THEORY, AND CONSEQUENTLY NO ATTENTION SEEMS TO HAVE BEEN GIVEN TO THE MUNICIPAL LAW WHICH PREVAILS IN PORTO RICO, AND NO INFRACTION OF SUCH LAW HAS BEEN MADE TO APPEAR.

THE GOVERNMENT RESPECTFULLY ASKS THAT THE WRIT OF ERROR BE DISMISSED, OR THAT THE JUDGMENT OF THE LOWER COURT BE AFFIRMED.

J. C. MCREYNOLDS,
Assistant Attorney-General.

WASHINGTON, *April, 1904.*

O

Supreme Court of the United States.

No. 205.—October Term, 1903.

Harold Crowley, Plaintiff in Error, vs. The United States. } In error to the District Court of the United States for the District of Porto Rico.

[May 31st 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

The plaintiff in error was indicted in the District Court of the United States for the District of Porto Rico as constituted by the act of Congress of April 12th 1900, entitled "An act temporarily to provide revenue and a civil government for Porto Rico, and for other purposes." 31 *Stat.* 85, *c.* 191.

The indictment was based upon certain sections of the Revised Statutes of the United States relating to crimes committed by persons employed in the postal service. *R. S.* §§ 5467, 5468 *and* 5469. The punishment for the offence here charged was imprisonment at hard labor for one year and not exceeding five years.

After the return of the indictment the accused filed a plea in abatement, which questioned the competency of certain jurors who participated in the finding of the indictment.

As the action of the court on that plea constitutes the controlling question in the case, the plea is given in full as follows:

"Now comes the defendant, Harold Crowley, and pleads in abatement to the indictment returned herein, and says that on Monday, the 8th day of April 1901, there appeared in this court at San Juan, it being the first day of said term, the following-named persons: Manuel Romero Haxthausen, Pedro Fernandez, Alex. Nones, John D. H. Luce, Antonio Blanco, Manuel Andino Pacheco, E. L. Arnold, Henry V. Dooley, J. Ramon Latimer, Miguel Olmedo, Ramon Gandie, Charles H. Post, numbering twelve in all, which said persons were then and there, by the direction of the court and the marshal, placed in the jury box, to constitute the panel for the grand jury of this said April term 1901 of this court.

"Whereupon the court then ordered the marshal to summon other persons to fill up the panel of the said grand jury, and immediately the marshal of the court sent his deputy out of the court room and into the city of San Juan to summon other jurors for such grand jury. Within a few minutes thereafter the marshal brought into court Frank Antonsanti, (re-

turned as Antonio Santi and Frank Santi, as appears by the minutes of this court,) Hugo Stern and William Bowen, the said persons not having been then and there bystanders in the court. The said panel then being incomplete, the marshal placed W. H. Holt, Jr., in the box, he being at the time a bystander in said court.

"Defendant says that thereupon the grand jury was constituted from the persons above named, and, after being sworn, proceeded to render a true bill against the defendant, which said alleged true bill on indictment was by the said grand jury, constituted as aforesaid, returned and presented to this court on Wednesday, April tenth 1901.

"Defendant says that by an act of the legislative assembly of Porto Rico, which took effect January 31st 1901, it was provided (§ 3) that jurors shall have the following qualifications, among others:

"1st. A male citizen of the United States or of Porto Rico, of the age of twenty-one years and not more than sixty years, who shall have been a resident of the island one year, and of the district or county ninety days before being selected and returned.

"4th. Assessed on the last assessment all of the district or county on property of the value of at least two hundred dollars belonging to him.

"SEC. 4. A person is not competent to act as a juror, 1st, who does not possess the qualifications prescribed by the preceding section"—which said provisions were in full force and effect at and before the time that all of the persons were summoned and impannelled and returned said indictment as aforesaid.

"That by the law of Porto Rico as aforesaid causes of challenge to jurors are and were at said time last above mentioned a want of any of the qualifications prescribed by law to render a person a competent juror. Defendant [states] that Manuel Adino is and was at the time above mentioned a citizen of the Republic of Venezuela. That W. H. Holt, Jr., has not been a citizen of Porto Rico for one year prior to the dates and time above mentioned when said jury was so summoned, impannelled and returned and when said alleged indictment was returned.

"Defendant says that at the same time last above mentioned the following persons, composing and constituting the said grand jury, were not assessed on the last assessment roll of any of the districts of Porto Rico on property of the value of two hundred dollars belonging to him: Antonio Blanco, Manuel Andino Pacheco, Miguel Olmedo, Charles H. Post, Frank Antonsanti, or Frank Santi, or Antonio Santi, W. H. Holt, Jr., William Bowen.

"Defendant further says that the following persons, composing and constituting said grand jury, were not at the time above mentioned publicly drawn from the box, containing at the time of each drawing the names of

not less than three hundred persons, possessing the qualifications prescribed in section 800 of the Revised Statutes, and which said names (hereinafter set out) had not been placed therein by the clerk of this court and a jury commissioner, as provided by act of June 30th 1879.

"Such persons whose names were not in said box and selected and summoned in the manner as aforesaid at the dates and times aforesaid were Hugo Stern, W. H. Holt, Jr., Frank Antonsanti, alias Frank Santi, alias Antonio Santi, William Bowen.

"Defendant says that no writs of *venire facias* were directed by the court against the said last above named persons from the clerk's office, signed by the clerk or his deputy, nor returned in the manner provided by Revised Statutes, § 803. Defendant says that he was not present in court at the time of the selection, summoning and impanelling of the jury aforesaid, and has had no opportunity to make any challenges to the same as the members thereof, because he did not know of said action and was not at the time represented by counsel, but that he has this day learned of the aforesaid acts for the first time and therefore immediately presents this plea.

"Defendant says that he has been and would be greatly prejudiced by the improper and illegal selection and impanelling of such grand jury as aforesaid, as it was composed at the time aforesaid of persons disqualified to act and who were not residents or taxpayers of Porto Rico, as required by law and because of their unfamiliarities with the island and the conditions and circumstances, material matters in this case and relevant thereto, some of said jurors as aforesaid having been but a few months in the island and temporarily sojourning herein.

"In addition to W. H. Holt, Jr., and William Baun, the following gentlemen of the grand jury were American citizens: John D. H. Luce, E. L. Arnold, Henry W. Dooly, J. Ramon Latimer, foreman thereof, Charles H. Post, Frank Antonsanti, by reason of which and their supposed knowledge of such practices by grand juries in the courts of the United States might, and as defendant believes did, *contend* the deliberations of said jury so as to induce a finding of indictment where the Porto Rican citizens thereof might not have otherwise done."

The United States demurred to the plea upon the ground that the matters set forth in it, so far as they controlled or were applicable to the summoning and empanelling of a grand jury in the court below, disclosed no illegality therein and constituted no reason why the accused should not be required to plead to the indictment.

The demurrer to the plea was sustained and the plea overruled. The defendant then demurred to the indictment, and, the demurrer being overruled, he pleaded to the jurisdiction of the court upon the ground that it

had no authority to proceed at its then special term, but could only proceed at a regular term. That plea was also overruled. The accused was then arraigned and pleaded not guilty, and a trial was had, resulting in a verdict of guilty and a sentence to four years' imprisonment in the penitentiary.

The first question is one of the jurisdiction of this court; the Government insisting that, under existing statutes, we are without authority to review the judgment in this case.

By the 35th section of the Foraker act of April 12th 1900, 31 *Stat.* 85, *c.* 191, it is provided, among other things, that writs of error and appeals to this court from the final decisions of the District Courts of the United States shall be allowed in all cases where "an act of Congress is brought in question and the right claimed thereunder is denied." In this case that act was brought in question by the contention of the parties—the contention of the accused being, in substance, that pursuant to that act of Congress the court below, in the matter of the qualifications of grand jurors, should have been controlled by the provisions of the local law relating to jurors, in connection with the statutes of the United States relating to the organization of grand juries and the trial and disposition of criminal causes; and the court below deciding that, notwithstanding the Foraker act, the local act of January 31st 1901, referred to in the plea, was not applicable to this prosecution, and that the grand jury finding the indictment, if a grand jury was necessary, was organized consistently with the laws of the United States under which the court proceeded. It thus appears that the accused claimed a right under the act of Congress and under the Revised Statutes of the United States, which, it is alleged, was denied to him in the court below. This court has, therefore, jurisdiction to inquire whether there is anything of substance in that claim.

The question presented by the opposing views of the parties is not free from difficulty. By section 14 of the Foraker act it is provided that the statutory laws of the United States, not locally inapplicable, except as otherwise provided, shall have the same force and effect in Porto Rico as in the United States. § 14. And by section 34 it is provided that, in addition to the ordinary jurisdiction of District Courts of the United States, the District Court of the United States for Porto Rico shall have jurisdiction "in all cases cognizant in the Circuit Courts of the United States, and shall proceed therein in the same manner as a Circuit Court." § 34.

Turning to the statutes of the United States, we find that "jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications" (subject to certain provisions and exceptions not material to be mentioned here) "as jurors of the highest court of law

in that State may have and be entitled to *at the time* when such jurors for service in the courts of the United States *are summoned.*" § 800.

Taking these statutory provisions all together, and having regard to the general scope of the Foraker act, it is manifest that Congress intended that criminal prosecutions in the District Court of the United States in Porto Rico, for offences against the United States, should be conducted in the same manner as like prosecutions in the Circuit Courts of the United States; the court in Porto Rico recognizing any valid *existing* local statute relating to the qualifications for jurors, just as a Circuit Court of the United States, in criminal prosecutions, would be controlled, (*R. S.* § 800,) in respect of the qualifications of jurors, by the applicable statutes of the State in which it was sitting.

So that we must inquire whether there was in existence any local statute relating to the qualifications of jurors by which the court below should have been controlled.

The plea in abatement, referring to certain provisions in a statute of Porto Rico prescribing the qualifications of jurors, states that it took effect January 31st 1901. That is a mistake. It is true that the statute was passed on that day, but it did not take effect until April 1st 1901. *Rev. Stat. & Codes of Porto Rico,* 1902, *pp.* 172, 210, § 160.

The plea correctly states that by that statute—the authority of the legislature of Porto Rico to pass it not being questioned—it was provided that a person was not competent to act as a juror who was not a male citizen of the United States or of Porto Rico, of the age of twenty-one years, and not more than sixty years; who had not been a resident of the island one year and of the district or county ninety days before being selected and returned; or who was not assessed on the last assessment roll of the district or county on property of the value of at least two hundred dollars, belonging to him. § 3.

In a brief opinion, made part of the record, the court below referred to the date on which the local statute took effect—April 1st 1901—and stated that the record showed that the venire of grand jurors for the term was executed and the jurors summoned *prior to that date.* This must be construed as applying only to those jurors who were summoned under the regular venire; for, it is distinctly shown by the record that the court convened April 8th 1901, after the local statute went into effect, and that of those participating in the finding of the indictment, four—Antonsati, Stern, Bowen and Holt—were summoned by the marshal, after that date, under the order of the court, to complete the panel of the grand jury. And the demurrer to the plea admits that Antonsati, Bowen and Holt were of those thus specially summoned after the court convened, and were not, when selected as jurors, assessed on the last assessment as owners of prop-

erty of the required value; and that Holt had not been a resident of the island for one year prior to his being summoned to serve on the grand jury. It thus appears that after the local statute took effect three persons were summoned by the marshal and put on the grand jury who were disqualified by that statute to serve. We perceive no reason why the District Court of the United States for Porto Rico should not have followed that statute when organizing the grand jury. It was then the law of Porto Rico. There was no difficulty in applying its provisions prescribing the qualifications of jurors to pending criminal prosecutions in the court below. One of the functions of that court was to enforce the laws of Porto Rico. If the court had given effect to the above act and held those to be disqualified as jurors who were declared by its provisions to be incompetent, then it would have proceeded—as it was required by the Revised Statutes of the United States and by the Foraker act to proceed—"in the same manner as a Circuit Court" of the United States sitting in a State would proceed under the law of such State prescribing the qualifications of jurors. But it did not proceed in that manner. It refused to follow the local statute.

It remains now to inquire whether the objection to the jurors above named was taken in the proper way and in due time. Can such an objection be made, as was done here, by plea in abatement after the return of the indictment? Upon this point the authorities are not in harmony. The question is not controlled by any statute, and must depend on principles of general law applicable to criminal proceedings in civilized countries.

Some of the cases have gone so far as to hold that an objection to the personal qualifications of grand jurors is not available for the accused unless made before the indictment is returned in court. Such a rule would, in many cases, operate to deny altogether the right of an accused to question the qualifications of those who found the indictment against him; for he may not know, indeed, is not entitled, of right, to know, that his acts are the subject of examination by the grand jury. In *Com'th* v. *Smith*, 9 *Mass.* 104, 106, a case often referred to, the court said that "objections to the personal qualifications of the jurors, or to the legality of the returns, are to be made before the indictment is found." But the court took care to observe that the decision was not rested on that ground. And in the later case of *Com'th* v. *Parker &c.*, 2 *Pick.* 550, 563, Chief Justice Parker, referring to *Com'th* v. *Smith*, remarked: "It is there said that objections to the personal qualifications of the grand jurors, or to the legality of the returns, are to be made before the indictment is found. It is not necessary to apply the remark here, and we have some doubts as to the correctness of it in all cases; and the case in which it was made was determined on another point."

One of the earliest cases in this country in which the question arose was that of *Com.* v. *Cherry*, 2 *Va. Cas.* 20, decided in 1815. It was there held

that if a grand juror was disqualified, the indictment or presentment, after being found, could be avoided by plea in abatement.

With rare exceptions this rule is recognized and followed in the different States. It will be appropriate to refer to some of the cases.

In *State* v. *Symonds*, 36 *Me.* 128, 132, an objection that the indictment was not found by the required number of legal grand jurors, being taken on motion in writing in the nature of a plea of abatement at the arraignment of the accused, was held to be in season and available. Later, in *State* v. *Carver*, 49 *Me.* 588, 594, it was said that objections to the competency of grand jurors by whom an indictment was found came too late if made after verdict, but must be pleaded in abatement. See also *State* v. *Clough*, 49 *Me.* 577. In *State* v. *Herndon*, 5 *Blackf.* 75, it was ruled that if a grand juror was disqualified for any reason, the accused may, before issue joined, plead the objection in avoidance. In *Doyle* v. *State of Ohio*, 17 *Ohio St.* 222, an objection, by special plea, that one of the grand jurors by whom the indictment was found was disqualified to act, was held not to come too late—the court saying that "no objection can come too late which discloses the fact that a person has been put to answer a crime in a mode violating his legal and constitutional rights."

In *McQuillen* v. *State*, 8 *S. & M.* 587, 598, the High Court of Errors and Appeals of Mississippi fully considered the question. Chief Justice Sharkey, delivering the judgment of the court, after observing that no one can be called to answer a charge against him, unless it has been preferred according to the forms of law, and that any one indicted by a grand jury can deny their power, said: "The question is, how is this to be done? A prisoner who is in court, and against whom an indictment is about to be preferred, may undoubtedly challenge for cause; this is not questioned. But the grand jury may find an indictment against a person who is not in court; how is he to avail himself of a defective organization of the grand jury? If he cannot do it by plea, he cannot do it in any way, and the law works unequally by allowing one class of persons to object to the competency of the grand jury, whilst another class has no such privilege. This cannot be. The law furnishes the same security to all, and the same principle which gives to a prisoner in court the right to challenge gives to one who is not in court the right to accomplish the same end by plea, and the current of authorities sustains such a plea. True some may be found the other way, but it is believed that a large majority of the decisions are in favor of the plea. To the list of authorities cited by counsel may be added the name of Sir Matthew Hale, which would seem to be sufficient to put the question at rest. 2 *Hale's Pleas of the Crown*, 155. Vide also *Sir William Withipole's Case*, *Cro. Car.* 134, 147." See also *Rawle* v. *State*, 8 *S. & M.* 609.

The same court, in a later case, sustaining the right of accused to challenge, by plea in abatement, the competency of the grand jury by which he is indicted, said: "This privilege arises not alone from the legal principles, that indictments not found by twelve good and lawful men at the least are void and erroneous at common law, and, therefore, some mode must be left open for ascertaining the fact, but is well sustained as a method for insuring to accused persons a fair and impartial trial. Such persons are not present when the grand jurors are empanelled, perhaps have not been made subjects of complaint or even suspicion. It certainly would not be right to estop a party from pleading a matter to which he could not otherwise except. The interest of an accused person under indictment with the grand jury commences at the time of the finding of the indictment. This is the point of time when, as to him, the legal number of qualified men must exist upon the grand inquest. Indictments not found by at least twelve good and lawful men are void at common law. *Cro. Eliz.* 654; 2 *Burr.* 1088; 2 *Hawk. P. C.* 307. It is said by *Hawkins, P. C. B.* 2, *ch.* 25, *sec.* 28, that if any one of the grand jury, who find an indictment, be within any one of the exceptions in the statute, he vitiates the whole, though ever so many unexceptionable persons joined with him in finding it." *Barney* v. *State*, 12 *S. & M.* 68, 72.

In *State* v. *Sanborn*, 4 *Dev.* 305, 311, and again in *State* v. *Martin*, 2 *Iredell*, 101, 120, the Supreme Court of North Carolina, speaking in each case by Chief Justice Ruffin, held that a plea in abatement, filed at the time of arraignment, was an appropriate mode of raising the question of the validity of an indictment as affected by the disqualification of a grand juror.

A leading case upon the question is *Vanhook* v. *State*, 12 *Tex.* 252, 268. The court there said: "The better opinion, to be deduced from the authorities to which we have access, seems to be that irregularities in selecting and impanelling a grand jury, which do not relate to the competency of individual jurors, can, in general, only be objected by a challenge to the array; but that the incompetency, or want of the requisite qualifications, of the jurors, may be pleaded in abatement to the indictment. And this doctrine and distinction seems founded on principle. It is the right of the accused to have the question of his guilt decided by two competent juries before he is condemned to punishment. It is his right, in the first place, to have the accusation passed upon, before he can be called upon to answer to the charge of crime, by a grand jury composed of good and lawful men. If the jury be not composed of such men as possess the requisite qualifications, he ought not to be put upon his trial upon a charge preferred by them; but should be permitted to plead their incompetency to prefer the charge and put him upon his trial, in avoidance of the indictment. Otherwise he may be compelled to answer to a criminal charge preferred by men who are infamous, or unworthy to be his accusers."

In *State* v. *Duncan and Trott*, 7 *Yerger*, 271, 275, the accused pleaded in abatement that one of the grand jurors who participated in the finding of the indictment was disqualified. The Supreme Court of Tennessee, speaking by Chief Justice Catron, afterwards a member of this court, said: "Suppose an indictment was found by a grand jury, no person composing which was qualified? All will admit the indictment would be merely void in fact, and ought not to be answered if the fact was made legally to appear. So, if any one be incompetent, it is equally void, because the proper number to constitute the grand inquest is wanting; and because he who is incompetent shall not be one of the triers of the offence at any stage of the prosecution. There seems, at some early stage of the proceeding by indictment, to have been some doubt whether the indictment was void because of the incompetency of one of the grand jurors, to set which at rest the 2 *Henry IV. ch.* 9, enacted 'that any indictment taken by a jury, one of whom is unqualified, shall be altogether void and of no effect.'" See also *Mann* v. *Fairlee*, 44 *Vt.* 672; *State* v. *Williams*, 3 *Stew.* 388; *State* v. *Bryant*, 10 *Yerger*, 527; *State* v. *Cole*, 17 *Wis.* 674; *State* v. *Brooks*, 9 *Ala.* 10; *Jackson* v. *State*, 11 *Tex.* 261; *State* v. *Freeman*, 6 *Blackf.* 248; 1 *Bishop Cr. Pro.* § 883, *and authorities cited;* 1 *Amer. Cr. Law*, § 472, *and authorities cited;* 1 *Chitty's Cr. Law*, 307; *Bacon's Abridg. Indictment, C. Bonvier's ed., p.* 53; 2 *Hale*, 155; 3 *Inst.* 34; 2 *Hawk. c.* 35, §§ 18, 26, 29 *and* 30.

We are of opinion that the objection here, that grand jurors were disqualified by the statute of Porto Rico, was made in the proper way and in due time. The accused was not in court when the grand jurors were selected and the grand jury empaneled. So far as appears from the record he was not aware that his case would be taken up by the grand jury. It does not appear he had, prior to the assembling of the grand jury, been arrested for the offences for which he was indicted. But upon the return of the indictment he was brought to the bar of the court and gave bond for his appearance and trial. His objection to the qualifications of the grand jurors was made promptly—three days after the indictment was returned—before he was arraigned and as soon as he learned of the facts upon which the objection was based. All this was admitted by the demurrer to the plea in abatement. If the objection in this case was not sufficient, then an objection made by plea in abatement prior to arraignment, that a majority or even all of the grand jurors returning an indictment against the accused were disqualified by law, would have been equally unavailing. Such a result is not to be thought of.

In this connection the Government calls to section 1025 of the Revised Statutes, providing that "No indictment found and presented by a grand jury in any District or Circuit or other court of the United States shall be

deemed insufficient, nor shall the trial, judgment or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant." This section can have no bearing in the present case, for the disqualification of a grand juror is prescribed by statute, and cannot be regarded as a mere defect or imperfection in form; it is matter of substance which cannot be disregarded without prejudice to an accused.

It is said that under the Spanish law prior to the cession of Porto Rico indictments and grand juries were unknown; that it was allowable under the law to proceed against an accused by a criminal information; and that the Legislative Assembly of Porto Rico had not made any alteration of the Spanish law in this particular when the grand jurors in this case were summoned. The contention in this view is that the indictment in question, having been signed by the United States Attorney, can be treated as an information. The indictment embodies charges made by grand jurors, and the signature of the United States Attorney merely attests the action of the grand jury, whereas an information rests upon the responsibility of the attorney representing the Government, and imports an investigation of the facts by him in his official capacity. But, apart from these considerations, we cannot treat the indictment as an information, for the reason, if there were no other, that, as the defendant was accused of an infamous crime against the United States, this prosecution could not have been commenced in a Circuit Court of the United States except on presentment or indictment of a grand jury; and the positive command of the act of Congress relating to the District Court of the United States for Porto Rico, that the court below "shall proceed in the same manner as a Circuit Court" of the United States, precluded the prosecution of the accused in the latter court except by presentment or indictment.

We have seen that some of the grand jurors alleged in the plea of abatement to be disqualified were summoned prior to the date on which the local statute went into effect; and if the local statute were applied to them, they would have been held incompetent to act as jurors. But there is some ground to hold under section 800 of the Revised Statutes of the United States, that if they were qualified when summoned, then they did not become disqualified by reason of anything in the local statute which went into operation after they were summoned. By what law the qualifications of those particular jurors were to be tested we need not determine; for what has been said as to disqualified jurors summoned after the court convened, and after the local statute went into operation and who were nevertheless permitted to participate in the finding of the indictment, is sufficient to dispose of the case.

For the reasons stated, and without considering other questions arising upon the plea in abatement as well as upon the record, we adjudge only that

the presence on the grand jury of persons summoned after the local statute took effect and who were disqualified by that statute—those facts having been seasonably brought to the attention of the court by a plea in abatement filed before arraignment—vitiated the indictment.

The judgment is reversed, and the case is remanded with directions to overrule the demurrer to the plea in abatement, and for such further proceedings as may be consistent with law.

Reversed.

Mr. Justice McKenna concurs in result.
Mr. Justice White dissents.

True copy.

Test:

Clerk Supreme Court, U. S.